

“Ethnic” statistics and data protection in the Council of Europe countries

Study Report

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Foreword

The European Commission against Racism and Intolerance (ECRI) of the Council of Europe is an independent human rights monitoring body specialised in combating racism and racial discrimination.

In the framework of its country-by-country monitoring and of its work on General Policy Recommendations, ECRI calls on governments to combat racial discrimination against vulnerable groups. ECRI stresses the necessity of closely following the situation in order to determine the extent of racial discrimination, and the areas in which it takes place.

This is why ECRI regularly recommends to the governments of member States of the Council of Europe to collect relevant data broken down according to categories such as nationality, national or ethnic origin, language and religion. ECRI demands of governments that they ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group.

ECRI is of the opinion that the collection of ethnic data is a beneficial instrument for shaping sound policies against racism and racial discrimination and for promoting equal opportunities. This data can provide baseline information on the situation of minority groups, which will then form the basis for social policies and later help in evaluating their progress. Collecting ethnic data helps to monitor discrimination and the implementation of anti-discrimination policies that have been put in place by governments. It also serves to assess whether these policies are effective, so that any necessary changes and adjustments may be made.

However, ECRI is also aware of the reluctance which surrounds the issue of ethnic data collection. Among the various types of data to be collected, there are different levels of consensus among the member States. The issue of using ethnicity as an analytic or even simply descriptive category is far from being clear-cut in a number of member States, and the ideological and ethical aspects which lead to different approaches in different member States should therefore be taken into consideration. Lastly, some laws concerning the protection of data are sometimes wrongly interpreted as being insurmountable obstacles to ethnic data collection.

This is why ECRI undertook a consultation process on the issue of ethnic data collection. A consultation meeting with international non-governmental organisations was held and a seminar with national specialised bodies to combat racism and racial discrimination was organised.

This study was commissioned by ECRI to follow up on the results of this consultation with a view to giving an overview of the existing legal and practical framework for ethnic data collection in member States. ECRI hopes that this publication will contribute to a more thorough understanding of what is covered by ethnic data collection, and that it will be useful in all circles which participate in the fight against racism and racial discrimination at national and international level.

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Introduction

Since it adopted its first General Policy Recommendation in 1996¹, ECRI has further defined its position on the question of collecting “ethnic” data for the purpose of combating racism, xenophobia, anti-Semitism and intolerance. Believing that “it is difficult to develop and effectively implement policies [...] without good data”, it recommends collecting, “in accordance with European laws, regulations and recommendations on data-protection and protection of privacy, where and when appropriate, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism, xenophobia, anti-Semitism and intolerance”. These principles are naturally subject to international and national laws on information processing and data protection. In practice, however, full implementation of these protective norms significantly restricts the collection of data on racism, xenophobia, anti-Semitism and intolerance.

Just as these data provide a picture of the situation regarding discrimination and exclusion based on ethnic, racial or national origin, religion, nationality or even language, so collecting and including them in official statistics involves recording characteristics which may be threatening those who are identified. This is why the international texts on data protection, freedom of information and respect for privacy term them “sensitive”, and contain special regulations on processing them. At the same time, there are considerable variations between Council of Europe member states when it comes to enforcing those regulations. While many countries interpret data protection laws in a way which prohibits the collection of “ethnic” statistics, others use certain provisions of those same laws to collect those data. The fact that practice varies so widely under laws which are, if not identical, at least similar, suggests that we need to look more closely at the content of those laws, and their impact on the implementation of laws and policies aimed at combating racism and discrimination.

The discrepancies between collection practices in various European states have increased with the passing of new anti-discrimination laws², and also new laws to protect ethnic or national minorities³. As countries have become more determined to achieve genuine equality, or indeed introduce positive measures to promote human rights in Europe, so reasons for collecting information on the situations encountered by persons or groups exposed to discrimination have increased⁴. The production of detailed statistics has become a prime necessity for compliance with European laws which have now been transposed into the domestic law of most countries.

Is it true that most European countries do not collect data because of legal provisions⁵? Is the diversity of national situations due to variations in the interpretation and implementation of laws? Or to different approaches in transposing international texts? Or (a final supposition) are the differences simply due, in the last analysis, to historical and political contingencies, and only minimally to legal constraints – which would explain why some countries venture to

¹ CRI (96) 43 rev.

² Particularly relevant within the EU are Directive 2000/43/EC on “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin” and Directive 2000/78/EC “establishing a general framework for equal treatment in employment and occupation”. At the Council of Europe, Article 14 of the European Convention on Human Rights (ECHR) prohibits discrimination in enjoyment of the rights and freedoms set forth in the text, and Protocol No. 12 to the ECHR contains a general non-discrimination clause.

³ Particularly the Council of Europe’s Framework Convention for the Protection of National Minorities (1995).

⁴ See on this question O. De Schutter (2004) “L’action affirmative comme instrument de lutte contre les discriminations en Europe : un outil de transformation sociale au service du droit européen”, in Martiniello M. and Rea A. *Affirmative Action. Des discours, des politiques et des pratiques en débat*, Brussels, Academia-Bruylant, pp.127-160, 2003.

⁵ “Guidelines for dealing with issues with issues related to ethnic data collection in ECRI’s country-by-country work”, CRI(2005)31, 7 November 2005.

collect data which others refuse to consider? These questions run through most of the recommendations issued by the ECRI in connection with its monitoring of racism and racial discrimination⁶ - and are not easily answered without first surveying data protection laws and practices. To find out just how far failure to collect “ethnic” data is really due to legal constraints, the ECRI has commissioned this study, which sets out to compare laws and practices in this area.

Conducting a survey of all the Council of Europe’s member states is not easy. The collection and processing of statistics are governed by two main types of international and national text: laws on the processing and dissemination of information, respect for privacy and data protection, which we shall call “data protection laws”, although their subject-matter and scope may differ slightly with their names; and laws on the compiling of statistics, conduct of surveys and collection of data, which we shall call “laws on statistics”. This framework has gradually become standardised, and derives from a series of international human rights treaties, more specifically two basic texts: Council of Europe Convention ETS 108 (hereinafter Convention ETS 108) “for the protection of individuals with regard to automatic processing of personal data” (1981) and European Directive 95/46/EC (hereinafter Directive 95) “on the protection of individuals with regard to the processing of personal data and on the free movement of such data”.

We are not, however, setting out to make a detailed comparison of laws which are usually more or less the same, since they respect Convention ETS 108 and transpose Directive 95. Knowing how they are applied in practice, and familiarity with national theory and case-law, are quite as important when we want to assess specific regulatory systems governing the production of statistics. As well as surveying practices in this area, it was important to ascertain the views of the main producers and users of statistics on the desirability of collecting “ethnic” data. The work done earlier in the EU by the European Commission committee responsible for the Community Action Programme to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation⁷ showed that there was no consensus on the use of statistics to promote equality. What about the main players in the Council of Europe countries? “Main players” means here the data protection authorities (hereinafter “authorities”), national agencies specialising in action against racism and racial discrimination (“national agencies”), national statistics institutes and organisations working to combat racism and protect human rights (“anti-racist organisations”).

Information on the practices and opinions of the “players” was collected by sending a questionnaire, drafted with the ECRI secretariat, to all the member states. This was unevenly answered, coverage being better for data protection authorities and statistical institutes than for national agencies and anti-racist organisations. Some of the countries which did not return the questionnaire explained that they lacked the expertise needed to complete it. After two reminders, we decided to analyse the replies received, insofar as each country was represented by at least one “player”⁸.

⁶ See country-by-country reports from the 2nd and 3rd monitoring cycles (2002-2003), and summary in the memorandum “ECRI’s position on ethnic data collection”, CRI (2004) 30 Addendum, 4 June 2004.

⁷ Decision of the Council of 27/11/2000 (2000/750/EC).

⁸ See annex 1 for a description of the results of the survey.

Apart from “ethnic data” explicitly so called, it is hard to list the things which that term covers. We accordingly adopted the list used by ECRI to describe its field of action: race, colour, national or ethnic origin, nationality, religion and language. As well as surveying laws, we reviewed the data included in official statistics, either census returns or population registers.

To take the study further, we examined the situation in four countries, chosen because they were typical - Germany, France, the United Kingdom and Hungary⁹, where the parameters determining the collection or non-collection of “ethnic” data are combined in very different ways:

- Germany has only recently transposed the Directive on racial and ethnic equality and collects no “ethnic data” officially. Its Data Protection Act was one of the first in Europe, and its recent past partly explains why the possibility of collecting statistics on groups which are likely to face discrimination has been little discussed.
- For a long time, France was very hostile to the idea of collecting “ethnic” data, but the introduction of anti-discrimination policies and measures to promote “diversity” in firms rekindled the debate, which has been going on for the last ten years or so. The CNIL - the data protection authority – has recently launched a consultation process and published an opinion on this question.
- Hungary has an active policy for the protection of national minorities and, within that context, the data protection authority, the Commissioner for the protection of minorities and the statistical institute have agreed on the format of questions concerning ethno-cultural identity included on the census form.
- The United Kingdom is the only European country to include ethnic categories on its census form, the aim being to make the 1976 Race Relations Act more effective.

This report analyses the answers to the questionnaire, and also surveys laws and practices concerning the collection of “ethnic” data. Chapter I analyses the relevant laws in terms of the two reference texts, Convention ETS 108 and Directive 95. Our approach to the latter is determined by the issue we are considering, and involves looking closely at three dimensions which are crucial for collecting “ethnic” data for the purpose of implementing public policies, and monitoring situations and trends: the distinction between personal data and statistics, definitions of “sensitive data”, and conditions applying to their collection. In presenting them, we give practical examples from various countries. Obviously, given the number of countries covered, exhaustive treatment was impossible. Chapter 2 then relates this legal framework to a survey of the situation regarding the collection of data on ethnic or national origin, religion, language, nationality and country of birth. We discuss certain questions of terminology and classification which have a strategic bearing on interpretation of the exemptions specified in data protection legislation. Chapter 3’s analysis of national situations enables us to link these various questions, and shows that the compromises reached vary considerably between countries, depending on their past, their equality policies and their political approaches to managing diversity. Finally, in Chapter 4, having provided a reminder of the data needed to implement non-discrimination principles, particularly under the European Directives on equal treatment and the Framework Convention for the Protection of National Minorities, we shall process the players’ answers to the opinion-eliciting questions included in the questionnaire: do they think that these data should be collected and, if they do, with what guarantees and for what purposes? The ultimate aim is, after all, to identify the thinking behind the collection of “ethnic” statistics, and also possible approaches to reconciling two aims which are complementary, rather than contradictory: guaranteeing protection of privacy, and collecting the information needed to combat racism and racial discrimination.

⁹ Study visits were carried out in Germany and Hungary to supplement the documentary material collected.

Chapter 1 – Data protection: laws and practices

1.1 The European legal framework and its national derivatives

Data protection has become a central issue in societies where computerised information is intensively circulated, and also extensively used in all areas of social life. In the postwar period and in response to the growing use of computerised data, first by governments and state or semi-state bodies, then increasingly by private organisations, the first data protection laws progressively codified the conditions for the collection and dissemination of personal data. After Sweden in 1973 and Germany in 1977, many European countries passed data protection laws and appointed commissioners or special authorities to enforce them.

These national initiatives were followed in 1981 by the adoption of the Council of Europe's Convention ETS 108 *for the protection of individuals with regard to automatic processing of personal data*. This convention was the first international instrument in its field, and laid down the main principles which were later taken up in national laws. At EU level, Directive 95/46/EC *on the protection of individuals with regard to the processing of personal data and on the free movement of such data* is the second reference source – stricter in many respects than the Council text – for data protection.

At 5 October 2006, 38 Council of Europe member states had ratified Convention ETS 108 and 4 (Moldova, Russia, Turkey and Ukraine) had signed without ratifying. All the EU states among them had fully transposed Directive 95, or had already satisfied its criteria before joining¹⁰. As a result, the laws governing the collection, production and dissemination of statistics in countries covered by this study are, to a large extent, very similar.

In addition to these laws, most countries have laws on statistics which prescribe codes of conduct for statisticians, regulate their work, and lay down rules on confidentiality more detailed than those contained in the data protection laws. Most of the laws and regulations on statistics can be found on the websites of the supervisory authorities (data protection laws) and national statistical institutes (laws on statistics). A survey of these laws, supplementing the table on the Council of Europe website, is contained in Appendix I¹¹.

These laws are designed to protect individuals against the collection of data which may be used for wrong purposes or violate their privacy. They accordingly lay down criteria which data collection must satisfy to be legitimate, and thus lawful. These “principles” or criteria are spelt out in Article 5 of Convention ETS 108 and Article 6 of Directive 95. Data must be obtained “fairly” and “for specified and legitimate purposes”. They must be “adequate, relevant and not excessive in relation to the purposes for which they are stored” and “accurate”, and must not be identifiably linked to persons more than is necessary. Thus, every collecting operation must satisfy these criteria, pursue legitimate aims and comply with certain conditions (collection method, notification of persons concerned, security and confidentiality of processing, transmission of the information).

¹⁰ We do not know how things stand with the last two countries to join, on 01/01/2007, Romania and Bulgaria, but it is likely that they had already aligned their data protection laws on EU standards.

¹¹ http://www.coe.int/t/tf/affaires_juridiques/coopération_juridique/protection_des_données/documents/legislations_nationales/legislations_nationales-fr.asp

The generic term “processing” covers the collection of data and production of files, their storage, the dissemination and publication of data, and their transfer in various forms to other operators. The compilation of files is subject to supervision, and so is communication of data, either in the form of the original data base or in any other form, detailed or less detailed (extracts, lists, tables, etc.). The dissemination of data concerning named persons is strictly regulated, to ensure that individuals who have supplied personal information are *fairly* treated. Only those for whom this information is intended are authorised to see it, and they must be specified when the file is declared. In theory, this means that unspecified parties may not use the file later, if they have not been identified when data was compiled – although exceptions may be made for public interest reasons, or to allow the authorities to exercise certain supervisory or punitive powers. The concept of public interest, which is relatively broad and open to interpretation, theoretically opens the way to secondary uses for research or official purposes, but is rarely invoked in practice.

The restrictions imposed on the processing of data chiefly depend on how the legal rules are applied:

Supervision may be exercised by the data protection authority before or after processing, in response to a complaint or on its own initiative. In the first case, it screens data before processing starts.

Prior checks are prescribed by Article 20 of Directive 95 when processing operations are “likely to present specific risks to the rights and freedoms of data subjects”. This provision echoes the precautions applying to the collection of sensitive data (see below) and clearly means that certain categories of data may be collected only when prior checks have been carried out by the authority concerned. What this involves – mere notification or formal authorisation by that authority – determines the degree of constraint imposed by the provision. In transposing the Directive, not all countries opted for the most restrictive formula.

Prior checks follow *notification* of the authority concerned. Notification often means just that, but can also take the form, of a detailed file, indicating why data are being collected, how they will be used and what their content is. The data protection authority then has to decide whether processing is justified and lawful. It must grant *formal authorisation*, and may impose special conditions before doing so. If it withholds authorisation, processing may not proceed.

The use of files for purposes other than those for which they were compiled also has a relatively strategic bearing on monitoring discrimination. Access to files kept by public authorities or by firms is strictly regulated. When notifying the protection authority that a file is being created, the person in charge of processing must indicate its purpose, which is one of the decisive criteria for granting authorisation. Each file thus has a strictly defined purpose, which must be stated when data are being collected. Secondary uses of files are nonetheless permitted for historical, statistical or scientific purposes. In such cases, the institutes authorised to use the data may be explicitly named in the law.

1.2 Personal data and statistics

Directive 95 is explicitly concerned with the “processing of personal data”, of which statistics are a sub-group or specific form of presentation. Making a distinction between personal data and statistics might be important if data protection laws were regarded as not applying to the latter. However, the answers to the questions on theory and practice included in our questionnaire show that this distinction is not really made.

First, it should be noted that, although data protection laws define “personal data” on the lines adopted in Directive 95, they rarely define “statistics”.

Directive 95, Article 2 (a) “‘personal data’ shall mean any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”.

Like Directive 95, the data protection laws refer to conditions for “statistical processing” of collected data, which means that no data are statistical in the strict sense, but that every statistic derives from data which were personal before they were converted into statistical information. As R. Padieu points out (2000, p. 9): “Statistics are based on data on individuals, but are not interested in individuals. Their sole purpose is to describe situations in global terms or bolster general conclusions”¹². This property of statistics means that their lawfulness must be considered with reference to the principles of proportionality and purpose. Two situations are possible:

- data are collected for administrative purposes and later included in statistical tables which can be disseminated or, having been rendered anonymous, constitute a data base which is then exploited statistically. Directive 95 and most laws provide that “further processing of personal data for historical, statistical or scientific purposes is not generally to be considered incompatible with the purposes for which the data have previously been collected”¹³, and that such processing is thus permissible without first obtaining the explicit consent of the person concerned. Similarly, if such processing takes place and the information is sent to a third party (typically the case when administrative statistics or files created by firms are analysed by research centres, NGOs or anti-discrimination agencies), notification of the person concerned may be omitted if this “proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by law” (Article 11(2)).
- data are explicitly collected for statistical processing, e.g. as happens when censuses are taken. The content of the information collected, and arrangements for processing and disseminating it, must comply with procedures supervised by the data protection authority. In such cases, the first essential is that reconnecting the data with persons must be impossible, i.e. the data must not be indirectly name-linked (though impersonal *prima facie*).

The very *nature* of statistical analysis, which involves making an “impersonal use of personal data”, suggests that it cannot harm individuals if procedures for ensuring anonymity of data are properly followed, and confidentiality is scrupulously respected throughout the process of collecting and producing data. This feature of statistics is recognised by the Council of Europe’s Committee of Ministers in its Recommendation “concerning the protection of personal data collected and processed for statistical purposes”, which updates an earlier recommendation adopted in 1983¹⁴. The general philosophy of this recommendation, which elaborates on Convention ETS 108 and Directive 95, is that processing and dissemination of data require no special supervision once those data have been made anonymous and cannot be linked to individuals. It is thus the conditions applying

¹² Padieu R. (2000) «Mobiliser les données existantes : enjeux et conditions», in *L’utilisation des sources administratives en démographie, sociologie et statistique sociale*, Dossiers et recherches No. 86, INED, pp. 9-16.

¹³ Recital 29 and Article 6(b).

¹⁴ Recommendation R(97) 18.

to the use of statistics, and the laws regulating the activities of agencies and statisticians¹⁵, which justify the granting of exemptions, and in practice give most national statistical institutes a specific right to collect personal data, including sensitive data. In many countries covered by this study, the general prohibition on collecting sensitive data is explicitly relaxed for purposes of statistical processing.

We shall take the example of Belgium's Privacy Act (*Loi sur la Vie Privée* - LVP), as explained by the Protection of Privacy Commission in its reply to our questionnaire:

"The law distinguishes personal data from coded and anonymous data. Both personal, and coded and anonymous, data may, under the current regulations, be processed statistically. The concept of statistical data is not defined in the law on data protection.

The Act of 4 July 1962 on public statistics, recently amended by the Act of 22 March 2006, defines a 'statistic' as 'quantitative or qualitative information, officially approved or not, derived from the collection and systematic processing of data'. [...]

The LVP, on the other hand, is concerned with processing for statistical purposes, statistical activity being regarded as an aim, achieved by using special data processing methods. For example, it was stated above that the sensitive data referred to in Article 6 could be processed in exceptional cases, when that processing took place under the Act of 4 July 1962 on public statistics. That authorised aim does not change the meaning of the term 'personal data'".

However, cases where the creation of statistical files violates privacy are frequent, and call for vigilance on the part of the protection authorities. *Ad hoc* decisions restrict the transmission of data to other users by the collecting agency when the authority considers that their confidentiality is not guaranteed. These restrictions may seriously impede the compilation of statistical files when a risk is identified, or simply envisaged without actually having arisen. A case referred to by the Icelandic Data Protection Authority (*Persónuvernd*) in its answers to the questionnaire provides a useful example:

Reply by the Icelandic Data Protection Authority

The implementation of the Act on The Statistics Office of Iceland, Nr. 24/1913, often calls for the processing of personal data. As an example of the interpretation of the Data Protection Act, No. 77/2000, in this regard, can be named the following: in 2003, the Data Protection Authority received a complaint regarding the national register, i.e. a register containing data on names, personal identification numbers, addresses, marital status, state citizenship, etc., of all people living in Iceland. According to the complaint, an employment agency, which had bought itself access to the register, had been given data on the complainant's state citizenship in Denmark. The case did not end with a formal conclusion, but The Statistics Office decided on its own to stop giving access to data on state citizenship.

¹⁵ See, inter alia, International Statistical Institute. 1986. "Declaration of professional ethics for statisticians." *International Statistical Review* 227-247.

Dangers of abuse and misuse

Cases in which persecution has relied on statistical files compiled for other purposes, or for that very purpose, are sufficiently well documented to remove all doubt as to their having occurred¹⁶. Illicit uses include 1) identification of individuals with reference to characteristics which may expose them to discrimination, exclusion or even persecution 2) the use of statistics to stigmatise a vulnerable group. In the first case, the main dangers inherent in the collection of data and creation of files relate to the possibility of their being used to identify individuals. The data protection laws which regulate the collection, production and dissemination of personal data attempt to control and minimise those dangers. In the second, the problem is less the possibility of identifying individuals, than the isolation of variables which characterise individuals or groups. Here misuse takes the form of stigmatisation, e.g., when stereotypes are confirmed by using findings reductively, or publishing tables without explaining them or analysing the factors which account for discrepancies. This is particularly true of statistics on crime, the prevalence of behaviour regarded as deviant or social problems treated more as burden on the community than as disadvantage for those directly concerned.

Efforts to remove the dangers attaching to identification of individuals focus on measures which make it impossible to connect data with persons. The devising of methods which can be used to encrypt previously personal data and make them anonymous, so that they can be archived and used for statistical purposes, is part of this¹⁷. Things have gone furthest with medical and epidemiological data, since this is an area where the ethical and scientific issues are crucial. Indeed, research in these disciplines depends on researchers' being able to reconcile medical secrecy and confidentiality of information concerning individuals with collection of the data they need to determine the etiology of pathologies and the characteristics of the persons they affect. The expertise acquired in this area could usefully be applied to other types of sensitive data.

"Ethnic" data have obvious potential for stigmatisation. They can also, however, be used to highlight instances of discrimination and so help members of vulnerable groups to obtain their rights. These two uses of the same data cannot be separated. In fact, the characteristics which make a group vulnerable are intrinsically likely to prove harmful to members of those groups. The problem is a relatively general one: any description of a group as unduly suffering certain disadvantages can be interpreted in two ways. For example, the fact that far more immigrants than "natives" are unemployed in most European countries reflects a major social problem which requires corrective action. Analysis of levels of educational attainment, and of other variables linked with social capital and employability, also highlights a greater risk of unemployment, which might be considered discriminatory. However, xenophobic and populist movements take the same findings and use them to demand that immigration be stopped, and jobless persons of immigrant origin expelled. Much the same thinking is applied to statistics which show that vulnerable groups have more problems at school or poor housing conditions: these groups are seen either as the victims of discrimination and injustice, or as a burden on society.

¹⁶ See, *inter alia*, William Seltzer and Margo Anderson, "The Dark Side of Numbers: The Role of Population Data Systems in Human Rights Abuses," *Social Research*, Summer 2001, Vol. 68, No. 2, pp. 481-513.

¹⁷ See, for example: *Statistical Journal of the United Nations Economic Commission for Europe*, special issue on Statistical Data Confidentiality, 18-4, 2001; *Journal de la société française de statistique*, "Nouveaux enjeux, nouveaux outils de la statistique sociale: panels et appariements sécurisés", 146-3, 2005

Declaration of professional ethics for statisticians, International Statistical Institute. 1986.

“Statistical inquiry is predicated on the belief that greater access to well-grounded information is beneficial to society. The fact that statistical information can be misconstrued or misused, or that its impact can be different on different groups, is not in itself a convincing argument against its collection and dissemination. Nonetheless, the statistician should consider the likely consequences of collecting and disseminating various types of data and should guard against predictable misinterpretations or misuse.” (point 1.1 considering conflicting interests).

Crime figures which show that certain groups commit more crimes and are more frequently imprisoned certainly provide the best illustration of statistics’ ambivalence. Roma are often over-represented among persons arrested and imprisoned for criminal offences. This helps to propagate stereotypes and the notion that Roma have a kind of “natural” propensity towards crime, due to cultural and social traits which encourage criminal behaviour¹⁸. Similar things are said about other immigrant minorities in West European countries, e.g. people of Moroccan origin in the Netherlands and Belgium, of more generally North African origin in France, of Albanian origin in Italy, etc. The main problem here is the way in which these figures can be interpreted when they highlight a characteristic which is seen as accounting for a given situation. Ethnic origin is then seen as a risk factor and not as a pointer to other characteristics associated with crime, such as low income, difficult living conditions, social and urban exclusion, etc. Moreover, the fact that Roma and members of vulnerable groups are over-represented among persons searched and arrested by the police is also the result of targeted checks (racial profiling). And the disproportionate number of Roma in prison reflects severer sentencing. In this case, the statistics tell us more about the *modus operandi* of police and courts than about the criminal propensities of vulnerable groups.

In this context, “ethnic” data come to be regarded in many countries as a source of stigma simply because they exist. Many of the replies to the questionnaire reflect this fear, speaking of “the problems of the past” and the legacy of practices which illustrate the potential dangers (Germany, Hungary, France in particular). The following are the risks associated with «ethnic statistics»¹⁹ :

- if racial or ethnic stereotypes are the product of racism, then the use of “ethnic or racial” categories is certain to confirm them and ultimately reinforce racism and discrimination;
- the appearance of “ethnic or racial” categories in official statistics tends to strengthen identities and make visible divisions which policies aimed at achieving cohesion by obscuring differences are trying to reduce. To that extent, “ethnic” statistics help to fragment unity and propagate multicultural or pluralist models;

¹⁸ See the views expressed in *Roma and statistics*, Council of Europe, MG-s-Rom (2000) 13 and Focus Consultancy, ERRC, ERIO (2004) *La situation des Rom dans une Union Européenne élargie*, European Commission, DG of Employment and Social Affairs, Droits Fondamentaux et antidiscrimination. http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/roma04_fr.pdf

¹⁹ These criticisms are elaborated by D. Kertzer and D. Arel in the introduction to their book, *Census and identity: the politics of race, ethnicity, and language in national censuses*, Cambridge, Cambridge University Press, 2002.

- even with major safeguards, there is always a danger that the information contained in statistics will be used for persecution purposes. Democratic regimes provide the guaranties needed to prevent abuse and misuse of collected data, but totalitarian ones can use them to target and exclude certain groups²⁰. Even in democratic regimes, some circumstances may create risks. In connection with the fight against terrorism, for example, many states have recently introduced “racial profiling”, using computer files to spot potential “terrorists”. These aberrations have been the subject of numerous warnings from human rights organisations²¹.

In fact, “ethnic data” count as sensitive in nearly all data protection laws and are subject to special processing rules, which we shall now examine.

1.3 So-called “sensitive data”

Nearly all data protection laws cover what they refer to as “special categories of data” or explicitly as “sensitive data”. Article 6 of ETS 108 and Article 8 of Directive 95 define the categories of data concerned and the conditions which may apply to their collection.

Convention ETS 108 Article 6 - Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

Directive 95/46/EC Article 8 – The Processing of special categories of data

1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

The “Guidelines for the regulation of computerised personal data files”, issued by the United Nations in 1990 are based on similar ideas. They employ non-discrimination terminology when they speak of “data likely to give rise to unlawful or arbitrary discrimination”. The general prohibition in the UN text seems less coercive than that in Directive 95 (“should not be compiled”). The possibility of their being compiled is confirmed by the next section, which covers “power to make exceptions”. This makes waiving of the prohibition subject to the requirements and guaranties formulated in the anti-discrimination laws. To that extent, the logic of data protection is subordinated to another logic – that of non-discrimination. If information discloses racial or ethnic origin, but does not result in “unlawful or arbitrary discrimination”, i.e. does not expose the supplier of the information to any special danger, then the principle is regarded as being satisfied and no offence is committed.

²⁰ The cases noted by Margo Anderson and William Seltzer (2001) in their survey, and particularly the internment of Japanese living in the United States during the second world war, show that these aberrations are not limited to totalitarian states in the strict sense.

²¹ Centre for Human Rights and Global Justice "Irreversible Consequences: racial profiling and lethal force in the 'war on terror'" Open Society Justice Initiative "Ethnic Profiling in the Moscow Metro".

“Guidelines for the regulation of computerised data files”, adopted on 14 December 1990 by the General Assembly of the United Nations in its Resolution 45/95²²

5. Principle of non-discrimination

Subject to cases of exceptions restrictively envisaged under principle 6, data likely to give rise to unlawful or arbitrary discrimination, including information on racial or ethnic origin, colour, sex life, political opinions, religious, philosophical and other beliefs as well as membership of an association or trade union, should not be compiled.

6. Power to make exceptions

Departures from principles 1 to 4 may be authorised only if they are necessary to protect national security, public order, public health or morality, as well as, *inter alia*, the rights and freedoms of others, especially persons being persecuted (humanitarian clause) provided that such departures are expressly specified in a law or equivalent regulation promulgated in accordance with the internal legal system which expressly states their limits and sets forth appropriate safeguards.

Exceptions to principle 5 relating to the prohibition of discrimination, in addition to being subject to the same safeguards as those prescribed for exceptions to principles 1 and 4, may be authorised only within the limits prescribed by the International Bill of Human Rights and the other relevant instruments in the field of protection of human rights and the prevention of discrimination.

In laying down special regulations for sensitive data, the international texts are not content with extra precautions in processing them, but impose:

- A general prohibition, which is waived on certain conditions. This prohibition is more forcefully expressed in Directive 95 (Article 8(1) “Member States shall prohibit the processing ...”, whereas Convention ETS 108 is less definite (Article 6 “Personal data [...] *may not be processed automatically unless* domestic law provides appropriate safeguards”). The difference between the two texts is thus the difference between a conditional reservation which may be withdrawn in special circumstances, and a prohibition which may be lifted only on relatively strict conditions, themselves monitored by the supervisory authorities.
- The reasons for this special treatment are rooted, not in the methods used to collect the data, but essentially in their potential significance. To that extent, even if their processing respects all the normal criteria of lawfulness, proportionality, confidentiality, etc., the fact still remains that these data, because of their capacity to *reveal* potentially discriminatory information, carry special risks²³.

²² <http://www.unhchr.ch/html/menu3/b/71.htm>

²³ The explanatory report on Convention ETS 108 explains, for example, in para. 43 on Article 6, that, apart from the context in which data are used, “there are exceptional cases where the processing of certain categories of data is as such likely to lead to encroachments on individual rights and interests”.

- Consequently, the collection of sensitive data is subject to special conditions and procedures, involving more searching inspection of the aims and proportionality of the operation. That inspection is carried out *before* any collection begins, and the operation's desirability is assessed by the legislator or supervisory authority, and often, in the case of official statistics, by both in consultation with the national statistical institute. Prior authorisation is the rule in most countries, except those which have standardised routines for the collection of sensitive data.

Most of the descriptive lists of data which may be considered "sensitive" or "special category" included in national laws are based on those given in Convention ETS 108 and Directive 95. Depending on national contexts, some categories are either added or omitted, e.g. trade union membership (in Finland and Sweden, among other countries). From a strictly legal standpoint, there has been discussion as to whether the list of categories should be restrictive or should be left open to accommodate new "risk" categories. In his report for the Council of Europe on sensitive data²⁴, Spiros Simitis suggests that the distinction between open and restrictive lists makes little difference, since both approaches can be changed by law.

As far as our study's scope is concerned, the question of the list's being exhaustive does not arise, since ethnic or racial origin (regardless of the exact terms employed) and religion appear on all the lists. National origin is not always mentioned explicitly, but – insofar as collecting countries assimilate it to ethnic affiliation – it is subject, in theory, to much the same supervision as ethnic or racial origin. This equating of "ethnic" and "national" origin highlights one of the main problems of enforcing the regulations on sensitive data. The data protection authorities' answers to the questionnaire indicate that no country's law gives an official definition of "ethnic origin". If the law fails to define "ethnic or racial origin", then the decision as to whether a given variable is "sensitive" depends on how the operators collecting the data and the protection authority interpret those terms. In some countries, interpretation is strict, and only data explicitly referring to "ethnic or racial origin" are prohibited; in others, it is broad, and data which work as a proxy for ethnicity (nationality, country of birth, name, etc.) count as sensitive.

Thus, although language does not appear as such in the lists included in data protection laws, some countries treat it as sensitive, depending on the issues raised by linguistic diversity. Belgium and Greece are examples. Nationality/citizenship is also interpreted in various ways. Although no laws explicitly include it among sensitive data, some protection authorities may take a more restrictive line in practice, and treat nationality and ethnic origin as equivalent, depending on the contexts in which these data are collected. In the past, the CNIL, the French data protection authority, has issued opinions which suggest that the recording of nationality should be restricted in certain cases, as the following passage explains:

²⁴ Simitis S. (1999) "Les données sensibles revisitées", Council of Europe, ETS 108, http://www.coe.int/t/f/affaires_juridiques/coopération_juridique/protection_des_données/documents/rapports/W-RapportSimitis.asp

Reply by the National Commission on Data-Processing and Liberty, France.

“The CNIL does not regard address, nationality and place of birth as ‘sensitive data’ within the meaning of Article 8. Nonetheless, the Commission pays special attention to the processing of data on nationality and place of birth in files, and the utility of collecting this information must be demonstrated in each case by the person in charge of processing: this is required, not only by the 1978 Act, but also by the Council of Europe and the European Directive of 1995. [...]”

In the particularly sensitive field of social welfare, the CNIL insisted, as long ago as 1980, that information on the nationality of beneficiaries should appear under three headings only: French, EU alien, non-EU alien”. In fact, Article 8 of Directive 95 speaks of “data revealing racial or ethnic origin, etc.”. This clearly means that all variables which reveal this information indirectly are also covered. However, the Directive does not indicate how far the scope thus outlined extends – with the result that each transposing authority must define its own principles. Many national laws take over the Directive’s wording or substitute something similar, e.g.: “relate or are intended to relate”» (Finland, Hungary), “indicate” (Latvia), “concerning” (Netherlands), “linked to” (Romania), “permitting the disclosure” (Italy). Some adopt a fuller form of wording: “as to the ethnic and racial origin (...) of the data subject” (Ireland, Lithuania, United Kingdom).

To provide a clearer picture of the area covered by data protection laws, the study questionnaire asked institutions to list the variables which, in their view, referred to ethnic or national origin. The range reflected in the replies summarised in the box below is vast, running from civil-status characteristics, such as name and first name, place of birth, nationality or citizenship, through ancillary features such as language and religion, to others which have more to do with practices and feelings, and are harder to formalise in statistics: culture, eating habits, sense of collective affiliation, customs, traditions, etc. Finally, race is also mentioned, though rarely recorded in Europe: race, skin colour. Physical appearance and photograph, both linked to the visibility dimension partly covered by the “racial” register, complete the list. Most of the replies mention one or two characteristics focused on “ethnicity or ethnic origin” (redundant in view of the question) or criteria linked with citizenship, country of birth and nationality. Language and religion are secondary, while characteristics referring to appearance or race are rarely mentioned.

This shows the extent to which the whole question of “sensitive data” is bound up with the *fear of abuse and misuse* of the information recorded, with discrimination being one of the chief concerns. For these reasons, the supervisory authorities have been given genuine power to assess the risks attaching to the collection of data, and may permit or prohibit the operation, as they see fit. A large body of case-law has gradually accumulated, giving a fair picture of the conditions which make the collection of certain sensitive data acceptable or unacceptable. Ultimately, everything depends on the system of exemptions considered, and on the way in which it connects with national traditions concerning the representation of ethnic or national minorities, and with policies and laws permitting the use of such data.

Lists of characteristics referring, directly or indirectly, to ethnic or national origin in the answers to the questionnaire²⁵ :

Ethnicity
Ethnicity of parents
Appearance
Nationality
Citizenship
Place of birth/ Country of birth
Nationality or country of birth of parents
Language used
Mother tongue
Name and first name
Photo
Race
Skin colour
Culture
Customs
Religion
Continent and country of origin (if outside Europe)
Religious beliefs
Clothing
Traditions
Eating habits
Sense of collective belonging
Tribe or ethnic group

1.4 Exemptions

Patterning themselves on the framework established by Convention ETS 108 and Directive 95, all national laws include a list of exemptions from the prohibition on processing “sensitive data”. This combination – imposing a prohibition to start with, and then adding a relatively long list of conditions on which data may nonetheless be collected – reflects the spirit of these laws. The aim is not to prevent the processing of sensitive data, but to establish safeguards. The common view that the data protection laws prohibit the collection of sensitive data is thus an exaggeration. The laws’ ambiguity is entirely due to their insistence on imposing a prohibition, which perpetuates doubt as to the lawfulness of collecting such data.

In this respect, Convention ETS 108 is more open than Directive 95, since it leaves national law to determine exemptions. A few years later, Directive 95 leaves no latitude and presents a list which EU states are required to respect.

²⁵ Answers to the question: “According to your organisation, which variables make reference, directly or indirectly, to ethnic or national origin?”, ECRI/INED questionnaire.

List of exemptions in Directive 95

Article 8 (1) Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

Paragraph 1 shall not apply where

Article 8 (2a) the data subject has given his explicit consent to the processing of those data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his consent

Article 8 (2b) processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law insofar as it is authorised by national law providing for adequate safeguards²⁶

Article 8 (2c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent

Article 8 (2d) processing is carried out in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects

Article 8 (2e) the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims²⁷

Article 8 (3). Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject under national law or rules established by national competent bodies subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

Article 8 (4). Subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions in addition to those laid down in paragraph 2 either by national law or by decision of the supervisory authority.

²⁶ This provision applies particularly to anti-discriminatory legal measures. It appears to be little used in practice, particularly since it is also included in the inter-sectoral references to legal obligations or reasons of public interest. (our comment)

²⁷ This provision is ambiguous, since the Framework Convention for the Protection of National Minorities and texts based on the anti-discrimination directives make it possible to bring court proceedings for violation of rights connected with ethnic, racial or national origin. In theory, anti-discrimination law constitutes a justification of the "defence of a right" type, regardless of whether that right is objectively used. (our comment)

Article 8 (5). Processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority, or if suitable specific safeguards are provided under national law, subject to derogations which may be granted by the Member State under national provisions providing suitable specific safeguards. However, a complete register of criminal convictions may be kept only under the control of official authority.

The grounds of exemption listed in Article 8 are not all on the same level, and most of them are of relatively limited application. Clauses 2b, 2c, 2d, 3 and 5 concern very specific areas (employment or health, vital interests, files kept by associations or NGOs). On the other hand, 2a, on explicit consent, can apply to nearly all forms of data collection. The last part of 2e, on exercise or defence of legal claims, can also be used extensively in connection with anti-discrimination laws, if courts accept statistical evidence. But paragraph 4, on reasons of public interest, is the one which provides a genuinely functional basis for the collection of sensitive data.

Recital 34 of Directive 95 clarifies the scope of the derogation for reasons of public interest by connecting it with public health and social protection. However, the concept of public interest applies to all areas of public action, and so leaves legislators relatively substantial scope for removing certain sensitive data from the protection authorities' control. It also specifies that scientific research and public statistics are areas where reasons of public interest apply. This opens the way to the collection of data which might seem to be prohibited.

Recital (34) of 95:

"Whereas Member States must also be authorised, when justified by grounds of important public interest, to derogate from the prohibition on processing sensitive categories of data where important reasons of public interest so justify in areas such as public health and social protection - especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system - scientific research and government statistics; whereas it is incumbent on them, however, to provide specific and suitable safeguards so as to protect the fundamental rights and the privacy of individuals;"

Prohibition with exceptions, or conditional authorisation?

In transposing Directive 95 or drafting data protection laws, countries vary in formulating restrictions on "sensitive data". Most articles detailing arrangements for the collection of such data start much as the Directive does by stating a general prohibition:

Literal transcription: "No processing may take place of personal data revealing..." (Denmark) or "Il est interdit de collectionner ou de traiter des données à caractère personnel qui font apparaître, directement ou indirectement, ..." (France)

Alternatively, they may impose no general prohibition, but instead make processing subject to a series of conditions:

"Sensitive data may only be processed if ..." (Norway, Czech Republic, Slovenia) or "is only permitted if..." (Estonia) or "The use of sensitive data does not infringe interests in secrecy deserving protection only and exclusively if..." (Austria)

Are these variations in wording reflected in different approaches to the collection of sensitive data? Subject to closer legal scrutiny, the wording chosen does not seem to imply a certain readiness (or otherwise) to grant exemptions. Nonetheless, when conditional authorisation is the chosen formula, this may reflect a greater openness or a system of derogations already in being when the law was drafted (but not necessarily applying to “ethnic” data). In this latter case, departure from the wording of Directive 95 indicates a pragmatic position. To some extent, collecting sensitive data is already regarded as possible, but needs to be carefully regulated. This applies, for example, to Switzerland which, not being a member of the EU, is not bound by Directive 95, and whose law does not specifically prohibit the processing of sensitive data, but does provide for special safeguards:

Reply by the Federal Data Protection Commissioner, Switzerland

“Processing of sensitive data must always respect special conditions in accordance with Article 6 of Convention ETS 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data. It must satisfy stricter requirements in the matter of legalisation of processing (in the public sector, there must be a law in the formal sense) or data security (for example, the requirement that data be numerical, or access granted by the day only.) ”

Consent

The concept of consent is the central element in the conditions governing the collection of personal data in general, and those which may harm individuals in particular. It is defined as follows in Article 2 h) of Directive 95: “the data subject’s consent” shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed”. Many national laws are more precise, and require written consent, which can be hard to collect for standard statistical operations. The practicalities of collecting written consent make this provision unrealistic when statistics are being compiled under normal conditions, and it has been severely criticised by statisticians and researchers. Here, one may mention the discussion sparked by revision of the French data-processing law when Directive 95 was transposed. Statisticians regarded the recording of consent in writing as “inappropriate”, since it further distorted the relationship between research subject and researcher, which needed to be based on trust. It was also felt that insisting on a written agreement cast doubt on the anonymity of the processing operation. Finally, the obtaining of consent was not easily reconcilable with the conditions in which surveys were conducted in practice. In all but the most favourable cases, it seemed quite simply impossible to obtain written consent – or at least sufficiently difficult to make data collection ultimately impracticable.

In the specific case of consent for the collection of “sensitive data”, there is an inherent contradiction between having to reassure respondents and convince them of the reasons for collecting and using data concerning them, and asking them to sign acceptance of something which ends by looking like a police operation or official document. Less demanding forms of consent are also current. From a minimalist standpoint, the mere fact that completing questionnaires is voluntary can be taken as implying consent. This, with very few exceptions, is the case with statistical and scientific surveys, which are also anonymous. Completing census forms, on the other hand, is nearly always compulsory, since they aim to be exhaustive. The answer here is to bring back a kind of consent by making certain questions optional (see below).

Exceptions to the rule on obtaining consent are essentially linked with legal obligations, public authority prerogatives or public interest missions. In one form or another, all data protection laws incorporate these rules on derogations, which are normally exploited, since explicit consent is not secured in most cases. Simplified rules on the compilation of data files,

monitored by the protection authorities, make it possible to standardise arrangements for collecting data without explicit consent.

Sensitive data in census-taking

Censuses are one type of survey in which answering is mandatory, in accordance with United Nations recommendations. This obligation is specified in most laws on census-taking. However, consent is reintroduced for certain questions which relate to sensitive data. Waiving the obligation of replying also accords with the principle of that everyone is free to declare, or not to declare, his/her membership of a national minority, as defined in Article 3 of the Framework Convention for the Protection of National Minorities. The method used here is to state explicitly on the questionnaire, or in the instructions given to census-takers, that questions relating to certain sensitive data are (unlike the other questions on the form) optional. This was the compromise followed when censuses were taken in Bulgaria (national origin²⁸, language and religion), Croatia (national origin, language and religion), Hungary (national origin, national affiliation, language and religion), Estonia (religion and language), the United Kingdom (religion), “the Former Yugoslav Republic of Macedonia” (ethnic affiliation and religion), Portugal (religion), Serbia and Montenegro²⁹ (ethnic affiliation and religion) and Slovenia (national origin and religion). In Russia, the entire census seems to have become optional in 2002. It should be noted that questions relating to sensitive data are not always optional. In Estonia, nationality/ethnicity must be indicated, while the “ethnic group” question must be answered in the United Kingdom³⁰.

In the United Kingdom, the reasons for recording certain sensitive data (those on ethnic or racial origin, disability and religion) in the census are essentially connected with the introduction of government policies which rely on such data or, more generally, official statistics based on these categories. There is a clear distinction of kind between countries with national minorities as defined in the Framework Convention for the Protection of National Minorities and countries with “ethnic minorities” made up of recent immigrants. In the case of “national minorities”, the aim is to protect the existence of minorities which have certain cultural or religious characteristics, whereas the “groups” targeted by anti-discrimination programmes do not necessarily have any existence beyond the fact of being exposed to unfavourable treatment. No useful purpose is served by asking members of groups subject to discrimination to acknowledge an identity or group affiliation, and then including those categories in the census. Those categories already indicate unfavourable treatment, regardless of whether the people concerned feel that they belong to a “minority”.

National data protection laws are shaped by international commitments. In this respect, Council of Europe member states fall into three groups: those which have not ratified³¹ Convention ETS 108 (6 countries), those which have ratified it and are not members of the EU, i.e. are not covered by Directive 95 (12 countries) and EU states which have transposed Directive 95 (25 countries). Although international agreements theoretically tend to harmonise national laws, one can expect greater disparities in application of those laws, i.e. in the practices actually followed by the protection authorities. In the field of sensitive data, there is relatively broad scope for interpretation of the texts, as Spiros Simitis notes in his

²⁸ “Nationality” is the actual term, but it is used to mean “national origin” rather than “citizenship” - which is why we use the other term to avoid misunderstandings. We do the same for the other countries referred to in this paragraph.

²⁹ When the questionnaires were dispatched, Serbia and Montenegro were still a joint national entity. This is why we have kept the name corresponding to the area surveyed.

³⁰ This question was made compulsory under the 1976 Race Relations Act (amended in 2000). In the course of the preparatory work for the 2011 census, insertion of a question on “national identity” was approved in the consultation process, and will be tested in the 2007 pilot run.

³¹ And, in some cases, have not signed it either.

report for the Council of Europe³². In fact, the compromises agreed with the public authorities, the statistical institutes and, more generally, the data-producers and civil society determine the actual conditions in which data are collected and disseminated. In other words, every situation is different, since decisions are taken ad hoc, with reference to the principles of purpose and proportionality, and also, in the case of sensitive data, the desirability of activating the exemption clause (legal obligation, essentially public interest).

In short, we can say that data which reveal ethnic and racial origin or religion may be collected under the data protection laws when:

- 1) laws make their collection necessary. Anti-discrimination laws may include provisions of this kind, but only the *Race Relations Act* in the United Kingdom and the Minorities Act (*Minderhedennota*, 1979, amended to *Alloctonenbeleid* in 1989) in the Netherlands make collecting statistical data mandatory. Laws on national minorities more frequently include references which may remove the prohibition on collecting “ethnic” data.
- 2) tax liabilities and the organisation of worship make it necessary to record religious affiliation.
- 3) the concept of “reasons of public interest” is applied and justifies a derogation from the prohibition on collecting such data. This will be an ad hoc derogation, producing less far-reaching effects than the legal obligation, and presupposing that the supervisory authority has recognised the reason as being “of public interest”.
- 4) explicit consent has been given.

In theory, these conditions are sufficiently broad to permit the collection of “ethnic» data if policy requires this. The obstacles to the processing of sensitive data are thus less a matter of law in the strict sense than of the context in which the aims of combating racism and discrimination are being assessed. In most Council of Europe countries, the problem is more lack of awareness of the role played by statistics in action against discrimination than genuine legal obstacles. In the case-law of the protection authorities, public interest and legal obligation are the two main justifications for the collection of “ethnic” data.

³² Simitis S. (1999) “Les données sensitive data revisitées”, Council of Europe. http://www.coe.int/t/f/affaires_juridiques/coopération_juridique/protection_des_données/documents/rapports/W-RapportSimitis.asp

Chapter 2 – The collection of “ethnic” data – present situation

Although the aim of this study was not to present a new picture of the situation regarding the collection of “ethnic” data in the statistics of Council of Europe countries, it was necessary to link this information on national practices with the laws on data protection. The answers to our questionnaire show how greatly ideas differ as to what the term “ethnic” covers. While nationality and citizenship are interchangeable concepts in the countries of Western Europe, they mean different things in all but a very few Central and East European countries. This distinction makes the concepts of national group or nationality, and ethnic group or ethnicity, equivalent.

This makes it hard to compile a comparative table of collection practices for “ethnic” data solely on the basis of what the authorities say, since each has its own definition of “ethnic”. The comparative study prepared for the European Commission by Reuter, Makkonen and Olli amply confirms this: national representations strongly colour perceptions of certain characteristics – perceptions which one might have imagined more objective³³.

Several comparative studies have been helpful in preparing this report. The survey of statistical sources for religion, language, national group and ethnic group in Europe, carried out by the Group of Specialists on the demographic situation of national minorities (PO-S-MIN) and presented by Youssef Courbage³⁴, provides the fullest reference framework and takes in the same countries and area that we do. However, some of the data contained in that survey have turned out to be approximate or have ceased to be valid since it was published (2000). Quite as old, and covering a more limited range of countries and variables, the report by Barbara Krekels and Michel Poulain³⁵ contributes something extra in terms of “national minorities”, since it focuses exclusively on data presenting “population generated by immigration or of foreign origin”. Relying on a survey of statistical institutes in 19 European countries carried out by Eurostat in 1994, the report provides a picture of practices, based on countries’ own statements. Finally, the most recent study is that by Ann Morning for the US Census Bureau³⁶. It deals with central aspects of the issues which concern us, but its geographical scope is world-wide.

In addition to these comparative surveys, we consulted more limited studies dealing with a single country or group of countries (e.g. the Balkans or the countries of Central and Eastern Europe³⁷), to put the answers to our questionnaire in context or ensure that the respondents were using the same definitions. Finally, and in view of the disparities between the sources we consulted, we decided to go back to the primary information sources. A large number of statistical sources, many translated into English, can be free-accessed on Internet. We

³³ Reuter, Niklas - Timo Makkonen - Olli Oosi (2004) Study on Data Collection to measure the extent and impact of discrimination in Europe. Report for the Working Group on Data Collection, EU Commission http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubst/compstud04fin.pdf

³⁴ Courbage Y. (1998) “Enquête sur les sources statistiques relatives à la religion, la/les langue(s), le groupe national et le groupe ethnique en Europe”, in : Werner Haug, Youssef Courbage et Paul Compton (ed.), *Les caractéristiques démographiques des minorités nationales dans certains États européens*, pp. 27-82. – Strasbourg, Council of Europe (Études démographiques, No. 30).

³⁵ Krekels B. and Poulain M. (1998) “Stocks de migrants et population d’origine étrangère – Comparaison des concepts dans les pays de l’Union Européenne”, European Commission, Population and Social Conditions, 3/1998/E/N°4.

³⁶ Morning A. (2005) “Ethnic classification in a global perspective : a cross-national survey of the 2000 census round” <http://unstats.un.org/unsd/demographic/sconcerns/popchar/Morning.pdf>

³⁷ Kotzamanis B., Mrjden S. and Parant A. (2003) *Les recensements récents de la population et des habitations dans les Balkans en 2000*, Volos (Greece) : University of Thessaly, Balkan Demographic Papers No. 5.

Eberhardt P. (2003) *Ethnic groups and population changes in twentieth-century Central-Eastern Europe*, Armonk, New York, M.E. Sharpe (initial Polish version 1996).

accordingly consulted the census forms, and the methodological guides which explain the content of the variables collected. The summary table given below merely indicates the kinds of variable collected, without going into details of the definitions used which, since they tell us so much about the history of countries, their politico-national structure, and relations between majorities and minorities, deserve a whole book to themselves.

The main sources used to compile statistical data are the old-style census (carried out on a set date, using a form which respondents complete with an official's help or on their own) and population registers, which are usually kept by local authorities and sometimes centralised. The ways of connecting administrative files with these population registers, which the Scandinavian countries have developed³⁸, are now starting to spread to other European countries. Collection methods and recorded variable formats have now been extensively standardised at the prompting of international statistical bodies. Thus the United Nations Statistics Division publishes standards for data-collection in censuses, and these were revised in 1998 in preparation for the census-taking round which took place around the year 2000. A further revision is now being discussed for the next round, in 2010. These recommendations cover topics to be tackled in censuses, and suggest question formats. In practice, many countries use the UN formats unchanged in their forms.

2.1 A problem of terminology

The first problem encountered when attempting to collate the statistics collected on "ethnic" origin and its various derivatives is precisely the lack of an exact definition of this concept. It is already hard to decide what "ethnicity" covers, but breaking it down into statistical categories is even harder. Non-essentialist definitions of ethnicity all insist that this is a socially constructed concept, which cannot be reduced to a list of attributes, such as territorial affiliation, nationality, language, religion, cultural traits, descent or genealogy. As well as combining some of these attributes, ethnicity implies a shared history, i.e. a type of collective sense of identity. M. Bulmer, for example, defines an ethnic group as a "*a collectivity within a larger population having real or putative common ancestry, memories of a shared past, and a cultural focus upon one or more symbolic elements which define the group's identity, such as kinship, religion, language, shared territory, nationality or physical appearance*"³⁹.

All the reviews written on this question insist that a generic category cannot be defined, and favours a pragmatic, case-by-case approach to classification⁴⁰. In fact, things termed "ethnic" by some are not considered so by others, who prefer to speak of "nationality" or "foreign origin". In the countries of Central and Eastern Europe, "nationality" denotes ethnicity or cultural origin. Citizenship and nationality often mean the same thing in the West, but are always distinct in the East.

The fact that ethnicity, just like "race", is a socially constructed characteristic when it appears in official questionnaires, is clearly affirmed by the principal official statistics authorities. The Principles and Recommendations for censuses, published by the UN in 1998, thus insist that the definitions and criteria used are determined by their *national context*, and that there is no exhaustive list of characteristics which can be used to identify "ethnic groups".

³⁸ See for example the description of the Finnish statistical system in: Statistics Finland *Use of Registers and administrative data sources for statistical purposes: best practices from Statistics Finland*, Helsinki 2004.

³⁹ Bulmer Martin, 1996. – The ethnic group question in the 1991 Census of population, in David COLEMAN et John SALT (éd.), *Ethnicity in the 1991 Census*, vol. 1, p. 33-62. – Londres, OPCS et HMSO, 290 p.

⁴⁰ Rallu J-L., Piché V. and Simon P. "Démographie et ethnicité : une relation ambiguë", in *Démographie : analyse et synthèse* (Vol VI : Population et société), Caselli G., Vallin J. and Wunsch G. (eds.), Paris, INED-PUF, 2004, pp. 481-516.

Principles and recommendations for population and housing censuses, Revision 1 (1998), Statistical Studies; Series M No. 67/rev1, New York, United Nations.

“(g) National and/or ethnic group

2.116. The national and/or ethnic groups of the population about which information is needed in different countries are dependent upon national circumstances. Some of the bases upon which ethnic groups are identified are ethnic nationality (in other words country or area of origin as distinct from citizenship or country of legal nationality), race, colour, language, religion, customs of dress or eating, tribe or various combinations of these characteristics. In addition, some of the terms used, such as ‘race’, ‘origin’ and ‘tribe’, have a number of different connotations. The definitions and criteria applied by each country investigating ethnic characteristics of the population must therefore be determined by the groups that it desires to identify. By the very nature of the subject, these groups will vary widely from country to country; thus no internationally relevant criteria can be recommended.

The draft revision prepared in 2005 contains a fuller description of “ethnicity”. The definition given in this up-dated version is more detailed and accords with the non-essentialist vision of ethnicity. The subjective dimension is reaffirmed, and the fluid nature of the category is emphasised (“ethnicity is [...] a process [...] so ethnic classification should be treated with moveable boundaries”). The recommendations explicitly favour a question which allows self-identification and accommodates multiple answers. They also make the point that nomenclatures which propose a pre-coded list of modalities influence replies and reduce the diversity of the group or ethnicities represented.

Principles and recommendations for population and housing censuses, Revision 2, Draft. United Nations, September 2006.

(f) Ethnicity

2.142. Broadly defined, ethnicity is based on a shared understanding of history and territorial origins (regional and national) of an ethnic group or community as well as on particular cultural characteristics such as language and/or religion. Respondents’ understanding or views about ethnicity, awareness of their family background, the number of generations they have spent in a country, and the length of time since immigration are all possible factors affecting the reporting of ethnicity in a census. Ethnicity is multidimensional and is more a process than a static concept, and so ethnic classification should be treated with moveable boundaries.

2.143. Ethnicity can be measured using a variety of concepts, including ethnic ancestry or origin, ethnic identity, cultural origins, nationality, race, colour, minority status, tribe, language, religion or various combinations of these concepts. Because of the interpretative difficulties that may occur with measuring ethnicity in a census, it is important that, where such an investigation is undertaken, the basic criteria used to measure the concept are clearly explained to respondents and in the dissemination of the resulting data. The method and the format of the question used to measure ethnicity can influence the choices that respondents make regarding their ethnic backgrounds and current ethnic identification. The subjective nature of the term (not to mention increasing intermarriage among various groups in some countries, for example) requires that information on ethnicity be acquired through self-declaration of a respondent and also that respondents have the option of indicating multiple ethnic affiliations. Data on ethnicity should not be derived from information on country of citizenship or country of birth. The classification of ethnic groups also requires the inclusion

of the finest levels of ethnic groups, self-perceived groups, regional and local groups, as well as groups that are not usually considered to be ethnic groups such as religious ones and those based on nationality. Countries collecting data on ethnicity should note that the pre-coding or the pre-classification of ethnic groups at the time of data capture may have a tendency to lose detailed information on the diversity of a population. Since countries collect data on ethnicity in different ways and for different reasons, and because the ethno-cultural composition of a country could vary widely from country to country, no internationally relevant criteria or classification can be recommended.

Statistics are not the only area where defining what “ethnicity” covers is a problem. This difficulty recurs in many European standard-setting texts. For example, Recommendation 1735 (2006) of the Council of Europe’s Parliamentary Assembly directly tackles the issue of divergent terminology in European countries, and the various political and legal problems which this causes. Attempting “to clarify the terminology used in constitutions and legislations in force to cover the phenomenon of ethnic, linguistic and cultural links”, Recommendation 1735 notes that nationality is a concept which can mean many things, and be taken to denote citizenship or cultural affiliation to a national group, which may itself be linked to a state other than that of which a person is a citizen, or to no state at all. This being so, it is best to adopt a pragmatic position, i.e. impose no shared definition and rely on national usage.

Extracts from Recommendation 1735 (2006) of the Council of Europe’s Parliamentary Assembly on the concept of “Nation”:

2. The Assembly, aware of the need to clarify the terminology used in constitutions and legislations in force to cover the phenomenon of ethnic, linguistic and cultural links between groups of citizens living in different states, in particular the use of the word ‘nation’ as well as the correlation with a specific historical or political context, has considered whether, and how, the concept of ‘nation’ – where applicable, a rethought and modernised concept – can help to address the question of national minorities and their rights in 21st-century Europe.

3. The Committee on Legal Affairs and Human Rights, in a study of the concept of ‘nation’ and its use in Europe based on data gathered from questionnaire replies from 35 national parliamentary delegations and on statements by experts in law and political science at a hearing it organised in Berlin on 7 June 2004, concluded that it was difficult, not to say impossible, to arrive at a common definition of the concept of ‘nation’.

4. The term ‘nation’ is deeply rooted in peoples’ culture and history and incorporates fundamental elements of their identity. It is also closely linked to political ideologies, which have exploited it and adulterated its original meaning. Furthermore, in view of the diversity of languages spoken in European countries, a concept such as ‘nation’ is quite simply untranslatable in many countries where, at best, only rough translations are to be found in national languages. Conversely, the words used in national languages have no adequate translation in English or French, the two official languages of the Council of Europe.

5. The Assembly has acknowledged that in some Council of Europe member states, the concept of ‘nation’ is used to indicate citizenship, which is a legal link (relation) between a state and an individual, irrespective of the latter’s ethno-cultural origin, while in some other member states the same term is used in order to indicate an organic community speaking a certain language and characterised by a set of similar cultural and historic traditions, by similar perceptions of its past, similar aspirations for its present and similar visions of its future. In some member states both understandings are used simultaneously to indicate citizenship and national (ethno-cultural) origin respectively. To this end, the term

'nation' is sometimes used with a double meaning, and at other times two different words are used to express each of those meanings.

6. The Assembly also acknowledges that whenever the concept of 'nation' means citizenship it designates some kind of a contractual relation between a physical person and a state, while when the concept of 'nation' means an ethno-cultural community it designates a cultural reality (a cultural fact or a cultural status) which is based on the free and unilateral association of a physical person to that community and involves only the relations among the members of that community. A nation in its cultural understanding becomes a subject of law (see international law) only if it organises itself as a state which is internationally recognised."

The same problem occurs with the Framework Convention for the Protection of National Minorities, which contains no definition of the term "national minority". Paragraph 12 of the explanatory report on the Convention explains that this omission reflects the adoption of a pragmatic approach, since "it is impossible to arrive at a definition capable of mustering the general support of all Council of Europe member States"⁴¹. However, in applying the Convention in their domestic law, several countries have adopted tailored-made criteria for definition of "national minorities", as they understand the term. This is true, for example, of Hungary, where the concept of "minority" is used for "ethnic groups" settled in the country for a century, which represent "a numerical minority among citizens [...], distinguish themselves from other citizens by having their own language, culture and tradition, and at the same time display a sense of collective affiliation"⁴². Similar definitions are found in Slovakia and Slovenia, among other countries.

To illustrate the wide range of definitions used, we have chosen some examples from the answers to our questionnaire, adding extracts from the methodological pointers appended to the national census publications:

⁴¹ "Explanatory Report on the Framework Convention for the Protection of National Minorities", Council of Europe, H(1995)010.

⁴² Section 1(1) of Act LXXVII of 1993 on the rights of ethnic and national minorities, Hungary.

Austria	<p>“<i>Volksgruppen</i>” is used for minorities, who are nationals and living on the territory of Austria for a very long time, with rights granted by constitution. This terminology is not used for migrants; this group is usually defined by citizenship (foreign) or country of birth in Statistics Austria⁴³.</p>
Cyprus	<p>The terms ethnic or national origin are not used. The terms used are “community” and “religious group”, which refer specifically to Cypriot citizens. In Cyprus there are 2 communities (the Greek-Cypriot community and the Turkish-Cypriot community) and 3 religious groups (Armenians, Maronites and Latins). The rest of the population are foreign nationals, meaning of foreign citizenship.⁴⁴</p>
Denmark	<p>“The statistics on immigrants and their descendants were introduced in 1991. The concepts were introduced to make it possible to give information on population with foreign background, including people who have attained Danish citizenship.</p> <p>Immigrants and descendants are statistical concepts created by using specific rules in connection with information on family relations, citizenship and country of birth.</p> <p>An immigrant is defined as a person born abroad whose parents are both (or one of them if there is no available information on the other parent) foreign citizens or were both born abroad. If there is no available information on either of the parents and the person was born abroad, the person is also defined as an immigrant.</p> <p>A descendant is defined as a person born in Denmark whose parents (or one of them if there is no information on the other parent) are either immigrants or descendants with foreign citizenship. If there is no available information on either of the parents and the person in question is a foreign citizen, the person is also defined as a descendant.</p> <p>Country of origin. -If none of the parents are known, the country of origin is defined from the information on the person in question. If the person is an immigrant the country of origin is the same as the country of birth. If the person is a descendant, the country of origin is the same as the country of citizenship.</p> <p>- If only one of the parents is known, the country of origin is defined from by person’s country of birth.</p> <p>-If both parents are known, the country of origin is defined by the country of birth or the country of citizenship of the mother.”⁴⁵</p>

⁴³ Reply by Statistik Austria, Austria.

⁴⁴ Reply by the Statistical Service of Cyprus (CYSTAT), Cyprus.

⁴⁵ Based on “Guide to Statistics”, section written by Anita Lange, *Statistics Denmark*.

Netherlands "Ethnic minority:

Category who (originally) does not originate from The Netherlands and the majority of persons which, measured according to objective standards, have a relatively low social position. Under this definition fall, a.o. Moluccans, Surinamese, Antilleans and Arubans, Turks, Moroccans, refugees (e.g. Tamils, Vietnamese, Cambodians, Afghans, Chileans, Iranians, East-Europeans), persons from other Asian countries (apart from Chinese, Indonesians and Japanese), Africans, South- and Central Americans, Roma/Sinti and members of the traveller community.

Allochtoon:

A person living in The Netherlands with at least one parent being born abroad. The person who is born abroad belongs to the first generation, the person who is born in The Netherlands belongs to the second generation.

The governmental body Statistics Netherlands (CBS) distinguishes between two categories *allochtonen*: with a western and a non-western foreign background. The non-western category includes persons from Turkey, Africa, Latin America and Asia, excluding (the former Dutch East Indies) Indonesia and Japan. The socio-economic and cultural circumstances which prevail in these two countries accounts for their inclusion in the western world. These are mainly persons born in the former Dutch East Indies and employees of Japanese companies and their families.⁴⁶

Norway

"Based on register information, there are a number of possible ways of identifying immigrants. We could, as many do, use citizenship, but this poses a number of limitations especially for comparative analysis. The main problem relates to the fact that individuals do change their citizenship through naturalisation and that this varies greatly between countries. Hence, persons born with Norwegian citizenship may carry all the visible signs of being of foreign origin. Country of birth is, arguably, a better indicator since it is invariant, but it is still important to be able to clearly identify different generations since many of the offspring of immigrants retain demographic behaviour patterns similar to those of their parents. It is for this reason that Statistics Norway has developed a standard classification based on parental country of birth for demographic analysis as well as for the study of other aspects of immigration like discrimination and citizenship. Classification at the most aggregate level consists of:

- A - without immigration background
- B - first generation immigrant without Norwegian background
- C - born in Norway by two foreign born parents
- D - adopted abroad
- E - foreign born with one Norwegian parent
- F - born in Norway with one foreign born parent
- G - born abroad by two parents born in Norway

Ethnicity is not available in any registers, only parental country of birth, that serves as a reasonably good proxy. Statistics Norway is reluctant to try and introduce ethnicity as a variable in the registers.⁴⁷

⁴⁶ Reply by the anti-racist organisation LBR (*Landelijk Bureau ter Bestrijding van Rassendiscriminatie*), Netherlands.

⁴⁷ Reply by *Statistik Sentralbyra*, Norway.

Poland	<p>“The terms “ethnic and national origin” are not used. Following related terms are used in Poland: ethnic minorities (<i>mniejszosci etniczne</i>) and national minorities (<i>mniejszosci narodowe</i>).</p> <p>A national minority is defined as a group of Polish citizens, which collectively meets the following conditions: it is lower in number than the remainder of the Polish population, it differs in a significant manner from other citizens by language, culture and tradition, seeks to maintain its language, tradition and culture, is conscious of its own historic national community and is inclined to express and protect it, has resided in the Republic of Poland for at least 100 years, and identifies with the nation organized in its own state. The definition of an ethnic minority is the same as the definition of a national minority except that an ethnic minority does not identify with the nation organized in its own state.”⁴⁸</p>
Romania	<p>“Ethnic Group</p> <p>The Census form of each person included <i>the ethnicity (ethnic group)</i> based on his/her free statement.</p> <p><i>The mother tongue</i> represents the first language usually spoken (in early childhood) in the enumerated person’s family.</p> <p><i>The religion</i> represents the belief or religious – spiritual option, registered according to the free statement of each person, whether or not this belief is expressed by affiliation to a community based on specific religious and spiritual dogmas.</p> <p>For children who couldn’t speak and for the ones below 14 years, <i>the citizenship, ethnicity, mother tongue and religion</i> were stated on their behalf by the parents/keepers; for the deaf-and-dumb persons or for those having a mental illness, the data registered were the ones stated on their behalf by the persons living with them.</p> <p>For the children found in orphanages, whose parents’ ethnicity, mother tongue and religion were not known, the registration was made according to the statements of the respective institution’s Administration Council.”⁴⁹</p>
Slovenia	<p>“In Slovene language, term “ethnic or national origin” is not used. Usually employed are “<i>nacionalno poreklo</i>” which is always translated into English as “national origin” and “<i>narodnost</i>” which is translated into English either as “national origin” (Constitution of the Republic of Slovenia, art. 14) or “nationality” (Act Implementing the Principle of Equal Treatment, art 1(1)). Term “ethnic or racial origin” (Slovene: “<i>rasa ali etnicni izvor</i>”) is used in art. 1(1) of the Act Implementing the Principle of Equal Treatment.”⁵⁰</p>
Switzerland	<p>The term “ethnic origin” is not officially used and defined in Switzerland. Moreover, national or ethnic affiliation is not a criterion in official Swiss statistics. Research on multi-culturalism also relies on data on citizenship, and on geographical (place of birth or origin) and cultural (language, religion) criteria.”⁵¹</p>

⁴⁸ Reply by the Helsinki Foundation for Human Rights, Poland.

⁴⁹ Cf. introduction to the Romanian census, 2002.

⁵⁰ Reply by the Office for Equal Opportunities of Slovenia.

⁵¹ Reply by the Office fédéral de la statistique, Switzerland.

“The former Yugoslav Republic of Macedonia”	<p>“Ethnic affiliation</p> <p>In accordance with the Census Law, the data on the ethnic affiliation are the results of the free declaration by the population. Each person could, for private reasons, refrain from declaring his/her ethnic affiliation.”⁵²</p>
Turkey	<p>“Article 66, paragraph (I) of the Constitution which is titled as “Turkish Citizenship” (<i>Türk Vatandaşlığı</i>) says that “Everyone bound to Turkish State through the bond of citizenship is a Turk” (in Turkish, “<i>Türk Devletine vatandaşlık bağı ile bağlı olan herkes Türktür</i>”).</p> <p>It is generally accepted in judicial and administrative practice that the term “Turk” is referring to the legal status of the Turkish citizens, but not to the ethnic or national origin. But, in recent months, in the context of the discussions on the definition of the term “identity” and redefinition it considering its different characteristics which can include the legal one (citizenship) and the ethnic or national origin (sub-identity), it is not easy to clarify that those terms are accepted generally in the society with a common understanding.”⁵³</p>

2.2 Diversity of practices in Council of Europe member states

Citizenship and country of birth are among the core topics listed for collection in censuses in the UN recommendations, whereas ethnicity, religion and language are optional (non-core topics). This distinction reflects the major disparities between national traditions in the matter of ethnicity. Some countries make it a decisive criterion in describing their population, while others not only take no interest in it, but refuse to define the very concept. This divide is rooted in the political and historical models which have shaped the nation, and which are themselves reflected in the variables included in population censuses. Less polemically, but quite as significantly, the attention paid to language spoken and religious belief differs greatly between countries.

However, every census round shows that the trend is towards convergence. The standardising role of the international organisations obviously plays a large part in this. Common activities of statisticians in their professional international organisations, exchange between national statistical institutes within international agencies, and the circulation of concepts and methods, are fostering a globalisation of population statistics. Societies themselves are also becoming more diverse, and this is bringing them to deal with issues which, until recently, they had never considered. Migration flows, which have been intensifying since the end of the Second World War, and are now affecting nearly all the world’s societies, are changing the face and composition of nations, and obliging them to revise their ways of representing population. New categories are tending to emerge in response to these new situations.

This double trend is reflected in the content of the UNECE’s recommendations for censuses in Europe. First published in connection with the census round which took place around the year 2000, these recommendations have recently been revised with a view to the next round, in 2010⁵⁴. While the 2000 version devoted a bare four paragraphs to the three issues “ethnic group, language and religion”, the 2010 version gives them a special chapter, headed “Ethno-cultural characteristics”. This chapter begins by emphasising the growing importance

⁵² Based on the introduction to the 2002 census, “The former Yugoslav Republic of Macedonia”.

⁵³ Reply by the *Human Rights Law Research Center*, Bilgi University, Istanbul.

⁵⁴ UNECE (2006) *Conference of European Statisticians Recommendations for the 2010 censuses of population and housing*, Geneva, United Nations.

UNECE (1998) *Recommendations for the 2000 censuses of population and housing in the ECE Region*, United Nations Publications, Statistical Standards and Studies No. 49.

of ethno-cultural data for European countries. The following paragraphs outline the reasons for collecting these data, and the special conditions to be observed, particularly voluntary self-determination and consultation of representatives of minority groups in drafting the questions. Special vigilance is recommended to ensure that data and their dissemination are adequately protected. The three topics (ethnic group, language and religion) remain optional (“subsidiaries” in the French translation), and the comments included on them emphasise their new status. It seems likely that more countries will follow the suggested line – and even likelier that the suggestion made in a previous chapter on internal and international migration will be generally implemented: recording parents’ country of birth to establish a category of “persons of foreign background”.

In spite of the trend towards standardisation of data collection practices, heterogeneity is still the dominant feature of the statistical landscape at the start of the 21st century. How many Council of Europe member states record information on ethnic origin (regardless of the terminology used), language and religion in censuses? The findings in table 1 will certainly cause some surprise, in view of the heated discussions sparked by the question of “ethnic statistics” in Europe⁵⁵. Of the 42 Council of Europe countries covered by this study⁵⁶, 22 collect data on ethnicity (usually termed nationality), 24 on religion (in terms either of denomination or belief, or of affiliation, more rarely both) and 26 on language (most commonly mother tongue, but other information on the language spoken is also collected). This relatively high overall figure actually masks a discrepancy between the countries of central and eastern Europe, some of which have been recording nationality (in the sense of ethnicity) for a long time, and countries in other parts of Europe, which have no such tradition of recording ethno-cultural characteristics. In fact, data on ethnicity are collected by only two countries in western and southern Europe, while only three collect data on language, and six data on religion. The fact that three countries (Austria, Finland, Germany) record religious affiliation for administrative purposes explains the higher figure for religion.

⁵⁵ A fuller table of the variables contained in the official statistics of Council of Europe countries is appended.

⁵⁶ Bosnia and Herzegovina was omitted from the initial list, because of the special situation of its statistical system and because its last census was carried out a long time ago (1991).

Table 1 – Information on national or ethnic origin, religion and language and their equivalents collected in official statistics

Country	Country of birth	Citizenship	Nationality/ethnicity	Religion	Language	Country of birth of parents
Albania	*					
Armenia	*	*	*		*	
Austria	*	*		*	*	
Azerbaijan	*	*	*		*	
Belgium	*	*				
Bulgaria	*	*	*	*	*	
Croatia	*	*	*	*	*	
Cyprus	*	*	*	*	*	*
Czech Republic	*	*	*	*	*	*
Denmark	*	*				*
Estonia	*	*	*	*	*	*
Finland	*	*		*	*	
France	*	*				
Georgia	*	*	*	*	*	
Germany	*	*		*		
Greece	*	*				
Hungary	*	*	*	*	*	
Iceland	*	*		*		
Ireland	*	*	*	*	*	
Italy	*	*				
Latvia			*		*	
Liechtenstein		*		*	*	
Lithuania	*	*	*	*	*	
Luxembourg	*	*				
Malta	*	*			*	
Moldova		*	*	*	*	
Netherlands	*	*				*
Norway	*	*				*
Poland	*	*	*		*	
Portugal	*	*		*		
Romania	*	*	*	*	*	
Russian Federation	*	*	*	*	*	
Serbia and Montenegro	*		*	*	*	
Slovakia	*	*	*	*	*	
Slovenia	*		*	*	*	
Spain	*	*				
Sweden	*	*				
Switzerland	*	*		*	*	
“The former Yugoslav Republic of Macedonia”	*	*	*	*	*	
Turkey	*	*				
Ukraine	*	*	*		*	
United Kingdom	*		*	*		
Total Council of Europe (n=42)	39	37	22	24	26	6

Note on the table:

This table is a synthesis of the information gleaned from the questionnaires returned for this study, and from exhaustive consultation of all the census forms⁵⁷ and of the sites of statistical institutes. The sources considered concern not only censuses⁵⁸, but also population registers and statistical data systems combining administrative sources and population registers. The number of countries adopting this ongoing information system is likely to have increased even further by the time of the next census round in 2010.

We have not, on the other hand, considered data collected in administrative files as such, or indicated whether the variables collected in censuses also appeared in other types of file. Nor have we taken account of data collected in scientific surveys and polls. Providing a panoramic view of all the data available in these sources in the 43 countries covered by the study goes far beyond its brief. Moreover, there is a major difference of coverage between data collected on a large, if not exhaustive, scale, as in the case of population registers or censuses, and data collected from small samples, which provide a better picture of the mechanisms, and of the situations of sub-groups, but are not transposable to larger geographical areas. It is also hard to assess the content of specialised surveys of groups vulnerable to discrimination, without full information on the methodology employed (size of sample, categories of population surveyed, types of question, etc.).

A relatively simply typology can be based on the questions covered in census forms and population registers. This shows that a whole series of countries describe their population with reference to citizenship and country of birth, the main distinctions recorded in the statistics being those between citizens/aliens/immigrants, combined in various ways depending on the history and nationality codes of countries⁵⁹. Most western and southern European countries are in this group, which we shall call state-centred, since they make the link with the state a criterion for (political or geographical) identification.

A second and far more numerous group, which we call the mosaic group, contains the countries which emerged from the wreckage of the former Austro-Hungarian and Soviet empires (sometimes both) or which are in the Balkans. Marked attention is paid to ethno-cultural questions, which help to define individuals' affiliation and place in the community. The emphasis placed on the religious dimension varies, but language and "nationality/ethnicity" are commonly collected and used to describe populations. A more political dimension was added when national and regional laws were passed to protect the rights of national minorities. Finally, a third group, which we call post-migration multicultural, covers a small number of countries which define themselves, more or less officially, as multicultural. Their approach to population diversity leads them to devise classifications which are designed to reflect the recent history of immigration, whether post-colonial or, more traditionally, labour migration. An alternative to the approach based on ethnicity, involves defining a "second generation", comprising descendants of migrants.

⁵⁷ These forms can now be accessed on the l'UNECE site: <http://www.unece.org/stats/census/2000/>. We pay tribute here to this prodigious resource, which allows users to grasp the extraordinarily wide range of societies in the world.

⁵⁸ The censuses were taken around the year 2000. The exact dates are given in the full table in the appendix.

⁵⁹ Depending on whether or not the nationality code applies *jus soli*.

Typology 1: Types of variable collected, depending on relationship between states and national identity

Type	Variables collected	Geographical area
State-centred	Country of birth and citizenship	EU 15 excepting northern European countries, Turkey
Mosaic	Nationality/ethnicity and language	Baltic countries, central and eastern Europe, Balkans
Post-migration multicultural	Ethnic group and religion Parents' country of birth	United Kingdom, Ireland, Netherlands, Scandinavian countries

Several Council of Europe member countries are partly outside this typology or have special features. This applies, for example, to Switzerland, whose pluri-cultural character is reflected in the importance attached to language in describing internal cultural diversity, which is superimposed on a very “state-centred” vision of immigration and its long-term socio-demographic consequences.

Another typology can also be constructed by combining parameters relating to the time when immigration began and the country's level of homogeneity. “Internal homogeneity” refers to that process of linguistic and political unification which leads states to regard themselves as nation-states or as pluri-national or multicultural states, with arrangements of varying complexity for political organisation of this internal diversity. Combining these two dimensions is useful because it allows us to test the theory that past experience of accommodating national plurality helps states to manage the later effects of immigration.

Thus, the group of countries with (relative) internal homogeneity and a long tradition of immigration includes those which collect information on parents' country of birth (Denmark, Norway, Netherlands) and others which rely on the classic definition of immigrants or aliens (Germany, Austria, Finland, France, Liechtenstein, Luxembourg). Similarly, the group of countries which have a long tradition of immigration, but also a level of internal heterogeneity which may make it easier for them to construct categories reflecting cultural diversity, covers all possible situations: the United Kingdom may collect “ethnic” data, but none of the other countries in this group does so. We can thus assume that structural and demographic conditions do not account for the way in which data collection practices have evolved. It is not automatically the case that countries with a high level of internal diversity naturally tend towards statistical representation of that diversity. The United Kingdom and Ireland appear to be the exceptions here. To what extent do they foreshadow the future practice of other states in comparable situations?

One likely development is that most of the countries which experienced radical population change as a result of immigration in the 50s and 60s, and former emigration countries which are now becoming immigration countries, will have to take decisions on collecting “ethnic” data in the next few years. This does not mean, however, that they will adopt the methods followed in the United Kingdom for reasons of political structure and intellectual tradition. And that in spite of the framework provided by transposition of the EU's “race” Directive, which tends to favour construction of a statistical apparatus attuned to combating discrimination.

Typology 2: Distribution of the 42 countries covered by the study according to their relationship with immigration and with political and demographic homogeneity of their population

	Long-established immigration (b)	Recent immigration	Little or no immigration
Internally homogeneous	Germany Austria (a) Denmark France Liechtenstein Luxembourg Netherlands	Greece Italy Portugal Ireland (a)	Iceland
Heterogeneous without minorities	Belgium (a) Malta Switzerland United Kingdom	Spain (a)	
Heterogeneous with long-established minorities	Estonia (c) Latvia (c) Lithuania (c) Norway (d) Sweden (d) Finland (d)	Turkey	Albania Armenia Azerbaijan Bosnia and Herzegovina Bulgaria Croatia Cyprus “The former Yugoslav Republic of Macedonia” Hungary Moldova Poland Romania Russian Federation Serbia and Montenegro Slovak Republic Slovenia Ukraine

(a) Presence of official minorities

(b) Immigration dating back to the 1950s and 1960s, or earlier in some cases (chiefly France).

(c) Mainly Russian immigration.

(d) Sami minority

Modes of declaration: self-identification and subjectivity

We have seen that the United Nations recommendations insist that individuals must be left free to declare, or not declare, their ethnicity. The decision to rely on self-declaration of ethnic or national origin is dictated by the will to respect free consent. It does not derive solely from the laws on data protection, but is also connected with the Framework Convention for the Protection of National Minorities. Article 3 of that convention stipulates that “every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such”, which means that affiliation to a “national” identity, and also declaration of such affiliation, can only be voluntary. In a sense, membership of a minority is something which the individual decides for himself. However, the wording used in Article 3, “belonging to a minority”, means that the convention sees membership of a minority as having substantive content, and not just as a mark or label, either chosen by, or imposed on, the individual. This question is illuminated by the explanatory report, when it says that this paragraph “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity.”⁶⁰

This illustrates the difference between the concept of national minority and the concept of ethnic group, when the latter is linked to immigration. While managing to respect a subjectivist approach to ethnic or national origin, censuses taken in countries where national minorities are officially identified try to formalise the conditions of such membership. On the other hand, countries which collect data on ethnicity, and whose diversity rests partly on long-standing immigration, insist on the importance of the subjective feeling of belonging. In these countries, categorization of the ethnic group does not rely on objective criteria. The degree of objectivity of the definition is conditioned by the rights attached to declaration of ethnic origin: a simple tag to monitor effective equality, or a characteristic conferring entitlement to specific rights or preferential treatments.

The approach based on self-identification is criticised by some national or ethnic minorities organisations. In an article published in the ERRC journal, Lilla Farkas favours hetero-identification when Roma are being registered, arguing that perception, rather than identity, is the source of discrimination⁶¹. This argument was also put forward in the debate on “Roma statistics” at the Council of Europe in 2000. Referring to statistics on Gypsies, Youssef Courbage shows that the self-identification method is leading to serious under-estimation of the number of people who would be defined as “Gypsies” or Roma⁶². He emphasises the paradoxical effect of this method, which provides the highest level of respect for the individual rights, but which means that only those most closely connected with the identity and practices of the group count as “Gypsies”, ignoring those who are moving towards a change in status, if not actual assimilation. Finally, self-identification can be manipulated by people who want to avail of the advantages accorded to protected groups, but are not themselves affected by the inequalities and discrimination which those groups suffer.

⁶⁰ Paragraph 35 of the explanatory report, our italics.

⁶¹ Lilla Farkas (2004) “The monkey that does not see”, *Roma Rights Quarterly*, No. 2, pp. 19-23. See also discussion in chapter on Hungary.

⁶² Courbage Y. (2000) “Utilisation et abus dans l’analyse démographique des minorités”, paper delivered at the conference “Statistics, Development and Human Rights”, Montreux, ISI, IAOS, p.10.

This position raises two problems, one more serious than the other. The first is that it is often methodologically difficult, if not impossible, to have categories established by third parties in surveys aimed at individuals, and particularly censuses. Moreover, the fact that identification varies according to the context in which data are collected (at the workplace, in everyday social interactions, during contacts with local authorities or with the police, etc.) and with the prejudices and attitudes of the people responsible for classification makes the whole operation very fragile. It is far from sure that classification can be replicated with the same result at two different times by two different people, particularly when categories are based on characteristics less salient than phenotypes.

The second problem with hetero-identification is the ascription to a category, whether or not the individual chooses to recognise himself as belonging to it. It is certain that the implicit violence in so doing merely reproduces the violence triggered by discriminatory prejudice. By reactivating the stigmatisation process in a clearly defined context, and for wholly laudable purposes, the operation simply creates another dilemma.

Various types of question asked to collect information on ethnic origin

Information on ethnicity, when it is collected, follows different formats which are not without effect on the answers themselves. It is known, in fact, that subjective variables are heavily influenced by the wording of questions, the presence of pre-coded categories and, in the case of open-ended questions, the presence of a list of examples which influence patterns of response⁶³. The choices made by the statistical institute carrying out the census simultaneously reflect political preoccupations, scientific interests and the legal framework laid down by policies on anti-discrimination measures, minority rights and data protection. Traces of each of these types of influence are found in the criteria which typify questions:

- the wording used in the question: nationality, ethnicity, ethnic affiliation
- the types of answer proposed, their order, the existence of a box marked "other"
- the optional or mandatory nature of the question.

Eleven countries use a precoded list, and 11 others have an open-ended question, leaving respondents to indicate their origin or ethnic affiliation. The lists follow one of two patterns: they reproduce either the official lists included in laws or regulations, or the main ethnic or national groups present in the country, in descending numerical order. For example, the Cyprus census lists the official communities defined in the Constitution, while the Hungarian census uses the list of national minorities included in Act 77 on the rights of ethnic and national minorities (1993), and the United Kingdom census has a list based on the standards laid down by the Commission for Racial Equality. Other countries, without explicit references, have lists based on the most frequent replies, e.g.: Bulgaria (Bulgarian, Turkish, Gypsy/Roma), Lithuania (Lithuanian, Russian, Polish, Belorussian), Latvia (Latvian, Russian, Belorussian). Another, relatively common model first records the largest group in the country (citizenship, ethnicity, language), and then leaves an open space for other answers. Poland and Romania are among those which use this model, first proposing⁶⁴ "Polish" or "Romanian" before inviting respondents to indicate other ethnicities or languages.

Countries which have open-ended questions on ethnicity or language leave the way completely free for self-declaration. This approach has the advantage of collecting

⁶³ See Rallu J-L., Piché V. and Simon P. (2004) "Démographie et ethnicité : une relation ambiguë", in *Démographie : analyse et synthèse* (Vol. VI : Population et société), Caselli G., Vallin J. and Wunsch G. (eds.), Paris, INED-PUF, 2004, pp. 481-516.

⁶⁴ In the English version of the census.

information on individuals' identification while influencing them as little as possible⁶⁵. The main thing is that respondents must be able to position themselves according to the theme raised by the question, which implies the existence of shared definitions of "ethnicity" or "ethnic affiliation". The instructions given to the census-takers provide information on the types of answer expected, which has a certain restraining effect on the respondents' potential inventiveness. Finally, it should be noted that taking explicit account of multiple answers is relatively rare. The rule seems to be that one ethnicity or national affiliation is taken as excluding all others. On the other hand, many countries provide for the recording of multiple nationality. Finally, the Slovene census is the only one which explicitly allows respondents to refuse to reply, including a box "I don't wish to answer this question" with the question on ethnicity.

2.3 Conditions for the collection of "ethnic" data: national experience

It is hard to say how data protection laws in states which collect "ethnic" data differ from those in states which do not. In answering the questionnaire, few institutions in countries where "ethnic" data are regularly collected⁶⁶ explained how, and under what provisions, their data protection laws had been adjusted. Usually, derogations from the prohibition on processing sensitive data are covered by the anti-discrimination laws and the laws on the protection of national minorities. These laws are sometimes explicitly referred to in those parts of data protection laws which deal with the collection of sensitive data. Usually, they are implicit and provide a basis for activation of the public interest argument. There are few Council of Europe countries in which the prohibition on collecting "ethnic" data has been waived under the anti-discrimination laws and the laws on equal opportunity.

The situation in the United Kingdom is undoubtedly exemplary, but is an isolated case⁶⁷. In the United Kingdom, the collection of data on ethnicity and religion is based on all types of laws and regulations which govern the production of sensitive statistics. The argumentation follows a three-stage process:

- a legal obligation laid down in the Race Relations Act, which the Data Commissioner uses to derogate from the prohibition:

"The Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 give public authorities a general duty to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different ethnic groups. This and other duties under the Acts lead to a need for the collection of ethnic group data for the purposes of ethnic monitoring, which can be used to highlight potential inequalities; investigate their underlying causes; and remove unfairness and disadvantage."⁶⁸

⁶⁵ See, for example this extract from the instructions for census staff, Romania, 2002 : "Census staff are required to create all the conditions needed for everyone to declare, freely and without constraint, the ethnic group to which she/he belongs".

⁶⁶ See next chapter for list of these countries.

⁶⁷ This is confirmed by the latest publication of the European Network of Legal Experts in the non-discrimination field, European Commission, November 2006, p. 87. http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_fr.pdf

⁶⁸ Replies by the Office of National Statistics, Great Britain

- a code of practice monitored by the laws on statistics (Census Act, National Statistics Code of practice)

“The code of practice states that data provided for National Statistics will only be used for statistical purposes. Data identifying individuals will be kept physically secure, and access requires authorisation and will only be allowed when the Head of Profession is satisfied the data will be used exclusively for justifiable research and that the information is not reasonably obtainable elsewhere. Where information identifying individuals must be given up by law, it will be released only under the explicit direction and on the personal responsibility of the National Statistician.”⁶⁹

- the aim of equal treatment is specifically mentioned in the list of exemptions from the data protection act:

Data Protection Act 1998, UK, schedule 3

“Conditions relevant for the purposes of the first principle: processing of personal sensitive data [is authorized if]:

The processing-

- (a) is of sensitive personal data consisting of information as to racial or ethnic origin,
- (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and
- (c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.”

The Netherlands, too, have implemented a coherent set of regulations for ethnic data. Their content differs slightly from the British model, but the system of exemptions is relatively similar. The Netherlands also have an active policy to promote minorities⁷⁰, and combat discrimination⁷¹, and these have generated certain legal obligations concerning the collection of data⁷². A number of specific changes have been made in the Netherlands Data Protection Act, indicating the conditions in which data on “race” may be collected:

⁶⁹ Replies by the Office of National Statistics, Great Britain

⁷⁰ *Minderhedennota* 1983.

⁷¹ *Algemene wet gelijke behandeling*, AWGB, 1994.

⁷² See Guiraudon V., Phalet K. and Ter Wal J., *Report on the Netherlands, MEDIS project*, European Commission, 2004. http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/pb_fr.pdf. See also Guiraudon, V., Phalet, K. and Ter Wal J. (2005) Measuring discrimination: Monitoring ethnic minorities in the Netherlands. *International Social Science Journal*, 183, pp. 75-88.

Article 18, Law on data protection, *Wet bescherming persoonsgegevens*, July 2000, Netherlands

“1. The prohibition on processing personal data concerning a person’s race, as referred to in Article 16, does not apply where the processing is carried out:

a. with a view to identifying persons and only where this is essential for that purpose;

b. for the purpose of assigning a preferential status to persons from a particular ethnic or cultural minority group with a view to eradicating or reducing actual inequalities, provided that:

1. this is necessary for that purpose;

2. the data only relate to the country of birth of the persons, their parents or grandparents, or to other criteria laid down by law, allowing an objective determination whether a person belongs to a minority group as referred to under (b), and

3. the persons involved have not indicated any objection thereto in writing.”

This section of the act, which was specifically added to permit the collection of data on the country of birth of individuals, their parents and grandparents, relies on public interest (in this case, preferential treatment for members of certain ethno-cultural groups for the purpose of reducing inequality) and carefully defines the content of the data collected. To that extent, it is not “ethnic data” which may be collected, but information on parents’ countries of birth, which is later used to determine membership of a minority. Finally, collection is conditional on the data subject’s lodging no written objection. Here, the written consent rule is reversed, and it is refusal which must be explicitly notified. By displacing the burden of consent and reversing the voluntary act, this facilitates data collection data and radically alters the philosophy of protection.

In Belgium, the Flemish, Brussels and Walloon Regions all have different approaches to anti-discrimination measures and the collection of “ethnic” data. While the Walloon Region still has relatively restrictive regulations on the production of “ethnic” categories, and applies the principles of non-discrimination in a more reactive than genuinely active spirit, the Flemish community has a resolute policy on equal opportunity, which is partly based on the Netherlands policy⁷³. Accordingly, various forms of collection have been authorised by the Belgian Privacy Protection Commission, whose argument runs as follows:

⁷³ See Jacobs D. and Rea A. (2005). “Construction et importation des classements ethnici. Allochtones et immigrés aux Country-Bas et en Belgique”. *Revue Européenne des Migrations Internationales*, Volume 21, No. 2, pp. 35-59.

Reply by the Privacy Protection Commission, Belgium

“In an opinion of 15 March 2004 on a draft decree authorising the processing of personal data on people from ‘groups with potential’, for the purpose of promoting proportional participation in the employment market (Opinion of 15 March 2004 on the draft decree prepared by the Flemish Government authorising certain members of the staff of the Employment Authority in the Ministry of the Flemish Community to process personal data on people from ‘kansengroepen’ (‘groups with potential’, for the purpose of promoting proportional participation in the employment market), the (Privacy protection) Commission indicated that it had already ruled (Opinion 07/93 of 6 August 1993 on the processing of sensitive data within the meaning of Section 6 of the Act of 8 December 1992 on protection of privacy with regard to the processing of personal data) that recording such data for the purpose of awarding a privileged position to members of a given ethnic or cultural minority, and so removing or mitigating actual inequalities (positive action – positive discrimination) was lawful, provided that it was essential to achieve this aim, and that the data referred only to the country of birth of the person concerned, or his/her parents or grandparents. Such data might not be recorded if the person concerned objected in writing.

Similarly, the Commission authorised the draft decree on the project for monitoring of ‘groups with potential’ on the staff file of the Ministry of the Flemish Community via the ‘Vlimpers’ system (Opinion 07/2006 of 22 March 2006 on the project for ‘monitoring of ‘groups with potential’ on the staff file of the Ministry of the Flemish Community via the ‘Vlimpers’ system). It stated that the principle of processing sensitive data was accepted, in view of the tasks entrusted by decree to the Flemish authority. As part of its policy for equal opportunity and diversity, the Flemish authority was trying to form a general picture of the presence on its own staff of persons of foreign origin and persons suffering from a disability which compromised their vocational integration. The processing of sensitive data was permitted for this purpose (aim – legitimacy), provided, of course, that the other conditions for processing were respected (adequate basis in law, proportionality, etc.).”

Other Council of Europe countries have not amended their data protection laws to adjust them to equal opportunity policies. The framework is then that protection authorities take *ad hoc* decisions after having examined the objectives of data collection and checked compliance with the general conditions for processing. Specific operations are regularly authorised, leading to the actual collection of “ethnic” data in specific contexts or fields. The main difference between this and the earlier cases is that collection is not a standard, repeated operation, governed by fixed norms. Each time, authorisation must be obtained from the protection authority before processing starts. In Austria, the general principle that the production of sensitive data is monitored is waived under the Federal Education Act (*Bildungsdokumentationsgesetz*, No. 12/2002, amended No. 169/2002) which acts as an enabling text. Collecting sensitive data was permitted provided that these data were entered on an anonymous file. A similar development has taken place in Germany in the education field, where “ethnic origin” classifications, based on the language spoken at home by pupils or the country of birth of their parents, are employed. In the same way, the French protection authority has, in specific cases, authorised the carrying out of surveys for the compilation of files which may contain “ethnic” data⁷⁴.

⁷⁴ For further details, see Chapter 3.

The final case is that of censuses carried out in the countries of central and eastern Europe. Their tradition of collecting data on ethnicity is connected, not with anti-discrimination policies, but with policies for protection of the rights of national minorities. As in the United Kingdom or the Netherlands, collection is jointly supervised by the data protection authorities, the statistical institutes and, when they exist, agencies specialising in the protection of minorities. In Slovakia, for example, the National Human Rights Centre links the collection of data on national groups in the Slovak census with Council of Europe Recommendation No. 1201(1993). The collection of data on ethnicity in the census forms part of a programme for recognition of minority rights and is the subject of a special declaration (Guidelines 4/2000 coll.) by the statistical institute, determining the content of the 2001 census. Moreover, these data are collected only for statistical purposes. The 2001 census in Slovakia was specially prepared to ensure that national minorities would accept it and participate. The representatives of national minorities sitting on the Government Council on National Minorities and Ethnic Groups persuaded the authorities to launch a public awareness campaign, "Declare your (ethnic) identity" for national minorities. The census forms were translated into the main minority languages, and special funds were voted for measures aimed at taking the message to members of minorities.

Usually, however, the procedure followed in including questions on ethnicity in the census is more general, and resembles that described by the Romanian data protection authority in its reply to the questionnaire:

"From the standpoint of enforcing the legal framework regarding the protection of personal data, the controllers are granted the right to collect and process data regarding the national, ethnical or racial origin, if they abide the conditions of the processing's legitimacy and proportionality, as well as granting the individual's rights (especially, the right of opposition) and applying security measures as means of reducing the risk regarding the collection of these data and granting the individual's right to privacy."

We have seen that the data protection laws are relatively similar, and that variations in the texts do not necessarily reflect very different practices. Nonetheless, research shows that practices regarding the collection of "ethnic" data do vary greatly in Council of Europe countries, since 22 out of 42 countries collect information on ethnicity in their official statistics, and 24 collect information on religion. Essentially, public interest and, less frequently, legal obligation are cited as the reasons for collecting sensitive data. Nonetheless, the compromises reached seem more often the fruit of pragmatic adjustment to a tradition which is not really questioned, than of a consistent legal system. That being so, few of the schemes observed in Council of Europe countries can be replicated in other countries without major policy changes.

Chapter 3 – National case studies

To amplify the picture we have given in earlier chapters of the links between the laws and regulations on data protection and the collection of “ethnic” data, we have decided to describe some typical cases briefly. We have chosen these four national situations since they provide relatively good examples of the various forms which the typology described in Chapter 2 can take. The United Kingdom is the main “post-migration multicultural” country in the Council of Europe area, and provides a relatively isolated example of a very highly structured system to combat discrimination and promote equality, based on systematic statistical monitoring. At the other extreme, Germany is a typical “state-centred” country, which has not made action against discrimination part of its political agenda and is still heavily marked by a conception of immigration management inherited from the labour migration period. Not only are few statistics on immigrant communities collected, but the possibility of adopting new policy and statistical measures appears to have been little discussed. France is another archetypal “state-centred” country, but its situation is more ambivalent than that of Germany. For a decade, the struggle against discrimination has been a central element in public debate and on the political agenda. Statistics are evolving slightly to match the population’s multicultural profile. At the same time, this development generates heated discussion of the whole question of “ethnic statistics”. The data protection authority – the CNIL – plays a major role in this discussion. Finally, Hungary is an interesting example of a “mosaic” country, whose policies for national minorities have led to the collection of “ethnic” data in censuses. After the change of political regime, the data protection authority has changed the rules for compiling of statistics, and ways of giving a more accurate picture of Roma communities in official statistics, and combating the discrimination they suffer more effectively, are now being discussed.

3.1 France

Laws and regulations on data protection

France, with German and Sweden, is one of the pioneers of data protection law in Europe, since its act on “Data files, processing and individual liberties” was voted on 6 January 1978. Transposition of Directive 95 encountered many difficulties, and was finally completed on 6 August 2004, when a major amendment to the 1978 act was adopted. The process of amending the act sparked discussion in the official statistical authorities (particularly the CNIS), but also and above all among legal experts, on ways of updating the guarantees provided by law, while improving conditions for the processing and secondary use of files.

The National Commission on Data Processing and Liberties (Commission Nationale Informatique et Libertés = CNIL) was set up to monitor implementation of the act on “data processing and liberties”, and is an independent authority comprising 17 members (parliamentarians, senators, members of the economic and social council, members of the Conseil d’Etat, a member of the Auditor General’s Department, judges in the Court of Cassation and distinguished experts). It is elaborately structured and its activities are broken down into fields with its own means which are sufficient (social, business, commercial files, etc). Its chief task is to protect privacy and individual and public liberties. The revised (2004) version of the act confirms it in its tasks.

As initially formulated, the CNIL’s main tasks are the following:

- To register files: the CNIL issues opinions on all new processing operations in the public and private sectors. The breach in provisions on data protection is punished by the criminal law.

- To monitor: the CNIL has the general task of monitoring data processing applications, and has investigative powers for that purpose. It may use those powers to examine complaints, or may verify the content of certain files on its own initiative. Finally, it may launch investigations to ensure that its decisions are respected. It also verifies that full precautions are taken to ensure that data are not distorted, or communicated to unauthorised third parties.
- To regulate: the CNIL uses its regulatory powers to formulate standard rules on the commonest processing operations, which clearly pose no threat to privacy or liberties.
- To protect right of access: the CNIL ensures that right of access is freely exercised, and, for individuals who request this, indirectly exercises access to files concerning the safety of the state, defence and public security, including files kept by the general intelligence service.
- To investigate complaints: any individual may submit complaints to the CNIL by letter. It decides what action to take on them: to disregard them, issue a warning or refer them to the prosecution service. It prefers mediation to court proceedings and, before taking any legal action, tries to secure a friendly settlement.
- To inform, advise and propose: the CNIL's information mission concerns the public, who need to know their rights and obligations, agencies which have already processed computerised data or intend to do so, public authorities and courts. It also involves publishing an annual activity report, which is sent to the President of the Republic and to parliament. Part of its job is also to consider how technologies are likely to develop, and how they will affect the right to protection of privacy, the exercise of liberties and the functioning of institutions. It may make proposals to government on any legislative or regulatory measures needed to bring the protection of liberties and privacy into line with the development of new techniques. Finally, its opinion must be sought on any proposed law which provides for computerised processing of personal data before the text is sent to parliament.

As the body responsible for ensuring that computerised processing of data respects individual liberties, the CNIL thus has important powers in two areas: it supervises the content of files, and then decides on what conditions they may be used. In exercising this supervision, it relies on rules which derive from the 1978 act which are, essentially, based on its own decisions and recommendations, and provide a reasonably stable set of principles.

The law requires all file-holders to notify the CNIL of their existence. In fact, it is not only a matter of notifying the CNIL, but often of seeking its permission to collect personal data which will be placed on computer. The law clearly authorises the CNIL to supervise and influence the choices made. To prevent the systematic, repeated submission of file declarations, a system of simplified rules, and of authorisations based on annual work programmes, has been introduced. Since 1978, 41 simplified rules have been introduced for widely varying sectors, e.g. school registers, business statistics, demographic data kept by local authorities, the management of bank loans and insurance policies, etc. Research and statistical agencies can submit their programme of activity at the beginning of the year for global approval and authorisation. In this context, the processing of sensitive data is watched particularly closely and must be specially authorised. The principles for examination of processing operations are the same as those laid down in Directive 95, and there is no need to repeat them here.

Protective supervision is also exercised under the law on statistics. Statistical activity itself is regulated by Act 57-741 of 7 June 1951 on “obligations, co-ordination and secrecy in the matter of statistics”.⁷⁵ The National Council on Statistical Information (*Conseil national de l’information statistique* = CNIS) was established by the act and supervises programmes for the production of statistical data, verifying that they are useful and that they respect professional, scientific and methodological standards. The CNIS, which complements the CNIL, also has considerable influence on the content of statistical databases, and thus on the variables they are likely to contain.

Theory and case-law

On several occasions in the last few years, the CNIL has had to redefine its position on the collection of sensitive data, and particularly data on ethnic or racial origin. Its action has essentially concerned data on nationality and country of birth which, because of the context in which they are used, can be assimilated to data disclosing ethnic or racial origin. According to its activity reports and interviews with its representatives, the CNIL has very rarely had to decide on applications to collect “ethnic or racial” data in the immediate sense of the term. Usually, its decisions concern variables which provide only indirect information on these factors:

“Apart from indications of race, ethnic group and skin colour, the CNIL considers that a processing operation based on the names or first names of individuals, and also certain processing operations based on multiple criteria, are covered by Section 8 of the Act of 6 January 1978 amended (formerly Section 31).”⁷⁶ This latitude of interpretation gives the CNIL a central role in determining the type of data which may be produced.

The CNIL’s position evolves in response to public discussion and the demands made on it. Extensive public debate on statistics making it possible to implement anti-discrimination policies effectively has a driving influence on adjustments in its thinking. In 2005, it issued a recommendation on measuring diversity of origins⁷⁷. It did this in response to pressing demands by firms which had committed themselves, in a diversity charter, to combating discrimination and promoting diversity in their workforces. In this important opinion, the CNIL acknowledged that “the aims of combating discrimination in the matter of employment are legitimate in terms of public interest”⁷⁸. Noting that “action to combat discrimination, and particularly discrimination on grounds of ethnic, national or racial origin, could rely on the introduction of statistical instruments making it possible to measure the discrimination to which certain individuals or groups may be exposed in firms and public services”, the CNIL considered that “analysing the names or first names, the nationality or the addresses of individuals for the purpose of assigning them to ‘ethno-racial’ categories serves no purpose in the absence of accepted national ‘ethno-racial’ typologies, and in the absence of a reliable link between these data and membership of a specific racial or ethnic category”. It also ruled that the collection of data on ethnic or racial origin might not be authorised considering the lack of “ethno-racial references”. It left the law to establish such a set of references, which might provide the basis needed for subsequent processing of data on discrimination.

The legislator took no special action on these recommendations, and firms were still left waiting for clear instructions, before they could measure diversity. The debate intensified, inciting the CNIL to launch a new series of hearings at the end of 2006 and beginning of 2007, with a view to giving an official opinion in May 2007 on statistics on diversity,

⁷⁵ Amended on three subsequent occasions, most recently in 2005.

⁷⁶ Extract from a text supplied by CNIL in addition to the questionnaire.

⁷⁷ Recommendation of 9 July 2005.

⁷⁸ All the following quotations are from the CNIL’s opinion of 9 July 2005.

discrimination and equal opportunity. Given on 15 May 2007, the opinion ends with a recommendation which open up the possibility of collecting data which mentions country of birth and parents' nationality, including possibly in the census (Recommendation N°2), or based on the analysis of first and family names (Recommendation N°4). At the same time, the opinion also expresses "strong reservations as to the creation of a national nomenclature for 'ethno-racial' categories". The collection of data on "physical appearance", including skin colour, is authorized in the framework of scientific studies on the "perception of discrimination by victims" (Recommendation N°3). These Recommendations constitute important progress for the issue of collecting data on ethnic and racial origin. They offer a new framework for these statistics whose effects we will be able to measure in the years to come.

Among cases considered by the CNIL, we have selected one which combines several types of sensitive data: the recording of nationality and country of birth in the mandatory declaration of seropositivity.

A decree of 6 May 1999 includes HIV seropositivity among diseases which must be notified. This declaration, which points the way to systematic screening, marks an important turning point in epidemiological monitoring, and a shift in health policy on HIV⁷⁹.

As can be imagined, computerised processing of these declarations must be attended by extreme precautions to protect patients. Health data are among the most closely monitored within the statistical system. The National Health Monitoring Institute has been given the task of setting up the system for declaration and collection of data. A complex system for making declarations anonymous by hash encryption has been devised, and the whole processing chain has been made secure. Obviously, these arrangements are validated by the data protection authority (the CNIL) at every stage in the process. An advisory committee, comprising the INVS, the relevant authorities, researchers and representatives of patient support associations, has also monitored the establishment of the system.

Although consultation made it possible to iron out many sources of conflict, most of the objections to the draft declaration form for seropositivity focused on questions of nationality. Since the patient's country of birth and nationality were indicated, some associations complained that the operation was "profiling undocumented migrants". As a result of the ensuing commotion in the media, the ratification process for the declaration system broke off short. After further meetings and intervention by experts, indications of nationality and country of birth were restored to the questionnaire. The INVS argued that the very high levels of sero-prevalence recorded in certain immigrant groups, particularly those from Sub-Saharan Africa, justified the development of targeted health policies. In fact, ignorance of the special problems encountered by immigrants in obtaining access to health services has, particularly in the case of AIDS, serious effects on their mortality risks. Epidemiology cannot easily overlook the fact that failure to indicate the origin of patients exposes them unduly to health risks. This is a good example of the way in which a kind of risk balance is struck between identification which exposes certain people to the danger of stigmatisation, and identification which helps to make people more aware of the risks and prevent them.

⁷⁹ For a discussion of the epidemiological justification and ethical aspects of the operation, see Antoniotti S., Manuel C., Sapin C., Auquier P., San Marco J.L. (2002) "Déclaration obligatoire de l'infection par le VIH. Justifications épidémiologiques et interrogations éthiques", *Santé Publique*, 14/1, pp. 63-73.

The CNIL then had to authorise the questionnaire, both arrangements for completing it and its content. We should remember that hash encryption makes the data sheet anonymous. The CNIL's decision was not therefore concerned with personal data-sheets, but was based on the utility and proportionality of the information collected. In its deliberations, the CNIL approved the form but recommended that nationality at birth should not be recorded⁸⁰. It considered this "excessive in terms of the aim pursued". It did not question the legitimacy of collecting information on the nationality or country of birth of patients, but considered that this "provides sufficient indications, having regard to the purpose of treatment and to epidemiological requirements". In fact, this reservation generates a new category, different to that employed in the census, by combining current nationality and country of birth.

This decision recently had a sequel, in February 2007, when an amended opinion was adopted, finally authorising the collection of information on nationality at birth to facilitate identification of immigrant communities exposed to the AIDS epidemic.

Data collected

Data collected in censuses in France have varied little since the end of the 19th century⁸¹. Country of birth and nationality (citizenship), identifying people who are French by birth, people who have acquired French nationality and aliens, have been recorded since 1881, and previous nationality has been recorded since 1962. Religion has not been recorded since 1882, reflecting broad interpretation of the secular principle and of the private character of religious and spiritual convictions. Administrative files do not all contain information on country of birth and nationality. When these administrative files are published or used, information is rarely given on immigrant communities, either to avoid stigmatising them or, more generally, because there are no special policies applying to them. The CNIL's recommendations tend to limit the dissemination of data collected in these files on immigrant communities, since file managers anticipate its supervision and censor themselves unduly. The CNIL has also issued simplified rules on the publication of data on nationality, recommending the use of three headings: French, EU alien, non-EU alien. These headings are too general for the data to be used in research on discrimination or action against it.

Although official statistics offer relatively limited information on people born in France, but connected at some time in the past with immigration, surveys have in recent years made it possible to study the situation of descendants of immigrants in French society⁸². These data are supplemented from other sources, eg tests for job-seekers⁸³ or applicants for housing⁸⁴. Finally, the High Authority for Action against Discrimination and for Equality has been publishing information on the nature of the cases it deals with since 2005⁸⁵.

At all events, these scattered sources provide only fragmentary information, which can certainly be used to construct an increasingly well documented analysis of discrimination, but does not permit the taking of practical action to curb indirect discrimination.

⁸⁰ 21 March 2002 (No. 02-020).

⁸¹ For a more detailed account, see Simon P. "Nationality and Origins in French Statistics : Ambiguous Categories", *Population : an English Selection*, 11, 1999, p.193-220.

⁸² For a recent survey, see Cusset P-Y. (2006) "Les statistiques ethniques: état des lieux, état des problèmes», Centre d'Analyse Stratégique, Rapports et Documents No. 3, La Documentation Française.

⁸³ For a recent example, see Cediey E. and Foroni F.

⁸⁴ See "Etude-Testing : la discrimination dans l'accès au logement privé", HALDE, May 2006. http://www.halde.fr/IMG/pdf/resultats_testing_logement-2.pdf

⁸⁵ Report 2006 is available on line at :

Mobilising data to combat discrimination

When the text of the “race” Directive 2000/43/EC was being negotiated, the French delegation to the European Commission successfully opposed inclusion of a clause calling on states to produce statistics. Moreover, France is one of the few European states which has not ratified the Framework Convention for the Protection of National Minorities. In this context, the production of statistics is one of the recurrent problems with action against discrimination. The “race” Directive was transposed relatively quickly by the Act of 16 November 2001, the “Act on Action against Discrimination”, supplemented in November 2002 by the Social Modernisation Act and, on 30 December 2004, the Act establishing the High Authority for Action against Discrimination and for Equality (HALDE). Finally, an “equal opportunity” Act was voted on 31 March 2006 in response to the riots which had taken place in urban working-class neighbourhoods in France in November 2005.

These successive laws are gradually establishing an institutional basis for action against discrimination, but say nothing about a statistical framework for such action. Neither the act of 2001 on action against discrimination, nor the act establishing the HALDE indicated what statistics would be needed or how they might be collected. The act of 2006 on equal opportunity could certainly have formalised a national system, like the equal opportunities schemes in the United Kingdom, Canada and the United States, but the text merely provided that job-seekers’ CV should be made anonymous and testing be used in anti-discrimination initiatives.

The HALDE is gradually adopting a position on statistics⁸⁶. It favours analysing the complaints submitted to it as a source of information on discrimination experienced, and funding a “discrimination barometer” based on annual testing. The use of testing is intended to avoid the use of “ethnic” categories in official statistics. The result of these options is to emphasise action against direct discrimination, as reported in individual complaints or reflected in test results. Little work has yet been done on a strategy to combat indirect discrimination – the kind of strategy which relies most on statistics. Nonetheless, this question has been the subject of heated debate in France since early 2004. The demands which are now being made by pressure groups representing the “black people of France” (the representative council of black associations of France, (Conseil Représentatif des Associations Noires de France = CRAN) and the initiatives taken by politicians and researchers are tending to make adjustments necessary.

3.2 Hungary

The law on data protection and freedom of information was actually prepared in the 1980s, and was one of the first to go through when the regime changed in 1989, and the new Constitution had been voted. Finally promulgated on 17 November 1992, Act LXIII sets out to do two seemingly contradictory things: protect the private lives of individuals, particularly against state interference, and permit the circulation of information. These two dimensions had obviously been lacking in the previous political era, and the Hungarian legislator produced, according to the Parliamentary Data Protection Commissioner, one of the strictest laws in Europe. In fact, the Hungarian law satisfied the requirements of Convention ETS 108 before Hungary actually ratified it (in 1998). At the same time, the law was substantially amended three times to conform with Directive 95: the Act on Secrecy (1995), the Private Archives Act (1995) and the Personal Data Management Act (1999) were all passed for this

⁸⁶ It should be noted that the HALDE did not wish to answer the questionnaire. Similarly, the National Statistical Institute (INSEE) did not return it.

purpose, turning Hungary into a “safe country” for the purposes of Directive 95 - with the result that no further changes were needed when it joined the EU⁸⁷.

Hungary's sensitive data provisions are similar to those in Directive 95, but do not cite public interest as ground of exemption. Instead, the crucial element for collecting sensitive data is consent, since anonymity makes it possible to put questions on national or ethnic affiliation and religion⁸⁸.

Minority rights and action against discrimination are covered by Act LXXVII (1993) on the rights of national and ethnic minorities, Act LIX (1993) establishing a civic rights ombudsman, and Act CXXV (2003) on equal treatment and the promotion of equality. Whereas the Act on the rights of national and ethnic minorities contains provisions permitting the collection of statistical data, the Equal Treatment Act remains more allusive on this point and is not cited in support of applications to collect data.

The main task of the Equal Treatment Authority, which was established in 2004 by government Decree No. 362/2004 (XII.26), is to receive and process complaints. It has administrative powers, and helps complainants in bringing legal proceedings. In the course of its activities, it has not requested special processing of statistics for supporting cases, and has not used the census for that purpose either. The only cases which use statistics are those related with discrimination on the ground of age.

Statistical identification of ethnic or racial origin in Hungary is first and foremost required by the policy on ethnic and national minorities, defined as follows in the 1993 Act:

“A national or ethnic minority is any ethnic group which has been present in the Republic of Hungary for at least a century, which represents a numerical minority of the country's people, and whose members are also Hungarian citizens, are distinguished from other citizens by having their own language, culture and traditions, have a sense of collective belonging, and try to preserve these features, and express and protect their communities, which have emerged over time.”

Hungary's policy on minorities is rooted in its desire to secure the rights of Hungarian minorities living in neighbouring countries – no fewer than five million “persons of Hungarian ethnic origin”, distributed between the Czech Republic, Slovakia, Romania, Slovenia, etc. Thanks to this policy, the very concept of “national or ethnic minorities” has positive connotations and entails definite characteristics. Established minorities have a legal right to elect their own local authorities (governments), although their powers are essentially limited to managing the community's cultural affairs. Since membership of a minority has never been officially defined, implementing these rights is a complex business. In fact, the 1993 Act recognises 13 different minorities with budgets of their own to do certain things. The list was drawn up when the Act was being prepared, and the conditions for recognition as a minority are relatively complicated. In fact, the Parliamentary Commissioner for the rights of ethnic and national minorities has registered only two official applications for recognition – from the Huns and a Croatian sub-group – and these were rejected following examination by the Academy of Sciences. Vaguer claims have also been made concerning persons of Chinese origin, who can point to their status as a linguistic and cultural minority.

⁸⁷ Péterfalvi A. (2006) “The amendments to Act LXIII of 1992 on the protection of personal data and the disclosure of information of public interest” in *Ten years of DP&FOI Commissioner office*, Budapest, Adavédelmi Biztos Irodaja, pp. 189-207.

⁸⁸ For a very complete account, see Kriszan A. (2001) *Ethnic monitoring and data protection: the case of Hungary*, in Kriszan A. (ed.) *Ethnic monitoring and data protection : the European context*, Budapest, CEU Press – INDOK, pp. 157-199.

Members of minorities are not recorded on a permanent basis. They identify themselves only to obtain certain rights, chiefly access to special classes in minority languages and the right to elect autonomous governments, operating at village, town and (in Budapest) district level. These governments are responsible for minorities' cultural affairs, one of their aims being to help preserve identity through language and culture. Religious affairs are not among the established minorities' prerogatives. Non-registration aims to comply with the freedom of affiliation to a minority, and to respect the anonymity guaranteed by the data protection law, but it causes problems when these "minority governments" are elected at four-yearly intervals. The elections are organised as follows: lists of persons entitled to vote and stand for election are compiled on a voluntary basis before the elections. Only candidates entered on these lists may stand. Neither candidates nor voters are required to produce proof of membership of a minority when they register. After the election, the lists are destroyed.

This system gave rise to widely reported abuses in the town of Jaszladany. There had been repeated tensions between the Roma community and the municipality, particularly concerning segregation of Roma children in schools – the election for representatives at the minority government of Roma community was carried by a list of persons well known not to be Roma. Clearly, failure to check the status of voters and candidates opens the way to impostures, creating a situation in which neither the spirit nor the letter of the law on minority rights is respected. Behind this incident lies the thorny question of knowing who is a Rom and, in general, who belongs to a minority. We have seen that the Framework Convention took care not to define the term "national minority" – and ECRI's principles for the collection of "ethnic" data give preference to self-identification.

An interesting debate has arisen in Hungary concerning two conflicting views on defining ethnicity⁸⁹. Some social scientists and Roma rights activists feel that self-identification creates a situation in which numerous people regarded by others as Roma, but unwilling, for various reasons, to declare themselves as such, do not appear in the statistics, and so vanish. They suggest that hetero identification, which has the advantage of reflecting social prejudices, is the answer. This will certainly mean that people who do not regard themselves as Roma are listed as such, but the fact is that - perhaps without realising it - they face some of the same problems as Roma. This is also the view of Lilla Farkas, who argues that third party identification overcomes the problem of substantial under-declaration by Roma⁹⁰. She adds a legal argument to the methodological considerations of her reasoning. In anti-discrimination law, unfavourable treatments are considered to be discriminatory if they are based on a real or perceived belonging to a minority. In law and in scientific theories alike, social perceptions are decisive: not affirming ethnic belonging does not ensure protection from discrimination. These arguments are supported by the broad discrepancies between figures based on self-identification (see below) and figures based on hetero-identification. For example, Dimitrina Petrova, former director of the ERRC, suggests that the real figure is three times the reported one. As she sees it, under-declaration is chiefly due to the stigma attaching to Roma identity, memories of deportation and genocide, and social marginalisation, which leads Roma to trust no one⁹¹.

The opponents of hetero-identification argue, firstly, that it introduces a bias intrinsically connected to social visibility of the stigma attaching to membership of this minority. In fact, the more Roma experience upward mobility, they lose the most salient signs of their identity. They are less often perceived as Roma, even not at all. As a result, hetero-identification

⁸⁹ Babusik F. (2004) "Legitimacy, statistics and research methodology – Who is Romani in Hungary today and what are we (not) allowed to know about Roma", *Roma Rights Quarterly*, No. 2, pp. 14-18

⁹⁰ Farkas L. (2004) "The monkey that does not see", *Roma Rights Quarterly*, No. 2, pp. 19-23.

⁹¹ Interview given during the study visit to Hungary.

tends to over-represent the most typical members of the group, i.e. those whose characteristics correspond to prejudice. Hetero-identification is also at odds with data protection law, which insists on consent for the collection of sensitive data. Both the Minority Rights and the Data Protection Commissioners are against it.

It should be noted that the discussion centres almost entirely on the Roma, and very little on the 12 other minorities, who seem to face no significant discrimination. In any case, these other minorities (Ukrainians, Poles, Germans, Armenians, Serbs, Croats, etc.) are essentially “invisible”, while all those involved agree that the Roma are a “visible minority”, identifiable by speech, dress and sometimes even skin colour.

Data collected

Traditionally multi-ethnic, Hungary has long been collecting data on ethnic affiliation⁹², with language as the main criterion up to 1941. A direct question on nationality (in the sense of ethnicity) was introduced after that, and appeared in the latest census (2001). That census also differed considerably from its predecessors in the method it used and in the extra questions covering “sensitive” data it contained. There were no fewer than six questions on language (three questions), the sense of belonging to a “nationality” (two questions) and religion (one question). Ethno-cultural affiliation is thus approached from many angles - mother tongue, the language spoken in the family or with friends, self-identification with a group, and affinity with its cultural values and traditions. Comparison of these various indicators of affiliation or ethnicity throws an interesting light on the extent to which each gives an accurate picture of the group concerned. For example, 190,000 people say that they are Roma, but only 130,000 identify with Roma culture, and fewer than 50,000 give Romani as their mother tongue. It is worth noting, however, that only 142,600 respondents said that they were Roma in 1990.

The form of the questions also changed substantially. At the request of minority representatives, multiple answers – maximum three – were accepted for each question. Few respondents availed of this, however: whatever the question, no more than 1.5% ever gave more than one answer. The census was brought into line with the laws on data protection and on national and ethnic minorities. Consultation between the statistical institute in charge of the census and the two Commissioners produced a compromise, making it possible to collect data useful for the protection of minority rights, while respecting the data protection laws. The questions on ethnicity, language, religion and disability were asked at the end of the questionnaire, and a prefatory note indicated that answering them (unlike the other questions) was not compulsory. Hiving off these questions might have been expected to produce a high non-response rate, thus impairing data quality and reducing the utility of including them in the census. In fact, the non-response rate was 5-6%, which is entirely reasonable.

In addition to the census, there have been numerous surveys of the Roma community (the largest minority by far, since the second largest, the German minority, has only 62,000 declared members). These surveys seek to highlight the flagrant inequalities which affect Roma, and particularly segregation in schools, which deprives most Roma of access to diploma courses, and perpetuates poverty⁹³.

⁹² The information on the census comes chiefly from the publication, Population Census 2001, *Ethnic affiliation. Data on national, ethnic minorities*, Budapest, Hungarian Central Statistics Office, and from interviews of the census officials at the Hungarian Statistics Office.

⁹³ For a rather old account, see Krizsan, op. cit.

There have been many demands for improvements in the collection of data on the situation of minorities, and particularly Roma. Critics focus on the Data Protection Act, claiming that it is used strategically to restrict investigation of the inequalities suffered by Roma. It is true that the law on national and ethnic minorities is not concerned with social conditions, but with giving minorities the resources they need to preserve their culture and language. The 1993 Act focuses on schools, insisting that they must be able to provide teaching which meets minorities' demands. Discrimination as such is not covered by the law on minorities, and the Equal Treatment Act will have to become a well-established feature of the legal and political landscape before we can see whether it will be a more effective instrument for improving the social situation of Roma.

3.3 Germany

The Parliament of Hessen passed the first German data protection law as long ago as 1970. This led, in 1977, to the passing of the Federal Data Protection Act (*Bundesdatenschutzgesetz*), providing one of the highest levels of protection in Europe. Germany's pioneering role in this area is readily accounted for by its past, and by suspicion concerning potential misuse of personal data, particularly by the state. The general approach followed in the Act, and in the revised version introduced when Directive 95 was transposed, is to limit possibilities of intrusion on privacy by ensuring that personal consent is a key condition for the collection of statistics⁹⁴.

The new Data Protection Act, transposing Directive 95, was promulgated on 1 January 2003. It generally follows the earlier act's structure, while relaxing the rules on using personal data for research purposes. Federal agencies, and the public sector in general, are subject to stricter supervision than private-sector organisations. The rules applying to public statistical offices and public authorities make it harder to produce statistics on "sensitive" subjects. The conditions for collecting "special categories of personal data" (*Besondere Arten Personenbezogener Daten*) are specified in Section 3(9) and reproduce the Directive's list. The exemptions from the general prohibition on collecting sensitive data are also similar to those in the Directive. Public organisations are dealt with in a special section (Part 11), and arrangements for the collection of sensitive data are detailed in Chapter I, Section 13(2). The general rules on collecting sensitive data prioritise express consent, and provide for prior supervision by the data protection authority. That authority is actually a centralised network of regional offices (*Beauftragte für Datenschutz*), linked to the Federal Commissioner for Data Protection and Freedom of Information (*Bundesbeauftragter für den Datenschutz und die Informationsfreiheit*). The Act itself is a federal law, but the regional offices have some latitude in applying it.

Case-law on the collection of "ethnic" data is still relatively limited, since initiatives in this area are few and far between. The only cases so far have concerned police registers of Sinti and Roma, compiled in the late 1990s. At all events, there are few incentives for collecting data as a basis for anti-discrimination policy. Although it has a long-standing policy on *Gastarbeiter*, Germany has only recently become aware that the context of immigration has changed. The idea that Germany is an immigration country has lately been gaining ground, and collective representations of German society are starting to accept it. The fact that the 1960s immigrants will not be going home and, above all, that their descendants are now German nationals, is generating a slightly different approach to integration. The integration problems of second- and third-generation Turks in Germany have recently become a subject of discussion. Many of these Turks have become German nationals under the Nationality Act of 1 January 2000, which gives the children of foreigners born in Germany an automatic

⁹⁴ On the data protection laws and the special case of "ethnic" data, see Dix A. (2001) "Ethnic statistics and Data Protection: the German experience", in Kriszan A. (Ed.) *Ethnic monitoring and data protection : the European context*, Budapest, CEU Press – INDOK.

right to German nationality⁹⁵. After migrants and aliens (*Ausländer*), new categories now figure in public discussion and in research, e.g. “Germans of immigrant origin” (*Deutsche mit Migrationshintergrund*). However, these changes do not necessarily spark changes in the statistical categories.

Politicians and the media focus on integration, and take little interest in discrimination. The EUMC’s German national focal point speaks of an “under-developed anti-discrimination culture”⁹⁶. The debate on transposition of the “race” Directive, and the delay in voting the necessary law, are indicative of the problems which tackling this issues in Germany⁹⁷. After several unsuccessful attempts, the Discrimination Act was finally adopted by Parliament in August 2006. Instead of an independent agency, it set up a ministerial service under the authority of the Ministry of Family Affairs, but operating independently (*Antidiskriminierungsstelle des Bundes*). The legal strategy is essentially to use the Criminal Code to deal with ethnic and racial discrimination, and to criminalise racist or anti-Semitic acts⁹⁸.

According to the annual “Raxen” report for the EUMC, data on discrimination are highly incomplete in Germany⁹⁹:

“Official statistical data on discrimination in the realm of employment do not exist in Germany, and even non-official data on discrimination are released rather rarely. One of those rare examples is the statistics on cases of discrimination published by the anti-discrimination office ADB Köln. The ADB Köln has registered 165 cases of discrimination between 2002 and 2004 within the framework of its counselling services. Only 7% of these 165 cases were categorised as cases of discrimination on the labour market. Research studies are another source of statistically relevant information on discrimination, for instance, the *ZfT* Multi-Topic Survey, conducted among 1,000 representatively chosen Turks in NRW every year (since 1999). In the 6th Multi-Topic Survey (2004), 56.5% of the interviewees stated that they had experienced discriminatory treatment at their workplace – more than in any other area. Furthermore, 48.4% stated that they had faced discrimination while they were looking for a job. These results display – for the first time since 1999– a slight decrease in the perception of discrimination in employment.”

There is no public debate on the statistics, which are discussed only by some NGOs and scientific experts. The organisations which represent ethnic minorities are generally very reluctant to tackle the question, an example being the Roma organisations, which are suspicious of the police and of the use to which statistics may be put. The 2010 census, which will rely on interconnection of files, will certainly give rise to debate, and give people a chance to put forward various arguments.

⁹⁵ Staatsangehörigkeitsgesetz, StAG, Act of 1 January 2000.

⁹⁶ Peucker M. (2006) “Equality and anti-discrimination approaches in Germany”, Working paper EFMS, Bamberg. http://web.uni-bamberg.de/~ba6ef3/mitmpe_e.htm

⁹⁷ Treib O. (2006) “Les conflits politiques en Allemagne autour de la transposition de la directive européenne contre le racisme”, *Critique Internationale*, No. 33, October-December, pp. 27-38.

⁹⁸ Baer S. (2005) “Country report Germany” in *Report on measures to combat discrimination*, Network of Legal Experts in the non-discrimination field, EU Commission. http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/derep05_en.pdf

⁹⁹ Bosch N. et Peucker M. (2005) *Raxen annual report for Germany*, EFMS, EUMC. http://web.uni-bamberg.de/~ba6ef3/pdf/DE_2005_NDCR.pdf

Data collected

Official statistics are still a potentially sore subject in Germany, where census-taking was finally abandoned after the last – and highly controversial – operation in 1987. People felt that the state was prying into their lives, and their acceptance of the census had become too doubtful to permit its completion. Instead, a file interconnection system (less sophisticated than that in the Scandinavian countries) and sample-based surveys are together used to produce socio-demographic data on the German population.

Data are collected via 5,400 municipal population registers (*Melderegister*), which are not centralised, except in the *Länder* of Bremen, Hamburg, Berlin and Rheinland-Pfalz. A personal identification code is used to link them to civil status data and naturalisation files¹⁰⁰. Under the Immigration Act of 2004, aliens are entered on a central register of aliens (*Ausländerzentralregister*, AZR), kept by the BAMF (Federal Bureau for Migration and Refugees). Based on administrative sources, this provides some information on foreigners, but none on Germans of foreign origin or *Aussiedler*. Aliens who acquire German nationality are automatically deleted from this central register.

The main data used to analyse discrimination come from two surveys: the microcensus (*Mikrozensus*) and the Socio-Economic Panel (*Sozio-oekonomisches Panel* = SOEP). The microcensus is a survey based on a 1% sample of the German population, which has been carried out since 1957. A new module on immigrants was brought in in 2005, introducing a question on parents' country of birth and making it possible to study migrants' descendants. The SOEP is a longitudinal panel which was set up in 1984. Of the 5,921 households (representing 12,290 persons) surveyed in 1984, 3,724 were still being observed in 2004. An immigrants panel was added in 1994/1995. However, the SOEP includes no question making it possible to identify immigrants' descendants¹⁰¹.

The superimposition of statistics on foreigners and on persons of immigrant origin makes analysis more confused. At the beginning of 2006, 20% of foreigners living in Germany had been born there, and the figure rose to 34% for Turks. To these figures must be added Germans of foreign origin, who have acquired nationality since the law changed, gradually making this easier, particularly for the second and third generations. The discrepancies between the figures for current nationality and origin over one or two generations are tending to increase. The data for Berlin show, for example, that 54,537 pupils of foreign nationality were registered at Berlin schools in 2003/2004, accounting for 16.5% of all pupils, but that 24% of all pupils (79,080) did not regularly speak German at home. This alternative category is often used in school statistics to trace the school careers of pupils of "immigrant origin".

The question on parents' country of birth, introduced by the microcensus in 2005, has brought a considerable change in the statistical approach to communities for whom integration is an issue. To some extent, too, the change reflects the PISA study findings in Germany, which sparked a debate on problems in the school system, and especially on pupils of immigrant origin. Whether based on combining nationality and country of birth of individuals, or directly on information concerning parents, the concept of *Migrationshintergrund* is beginning to take hold. The language spoken at home is used in surveys carried out in schools, and is included in the data collected by the Ministry of Education. The latter has recently published studies which contain data on "children and

¹⁰⁰ Our information on the files comes from Bilger V. and Kraler A. (2006) "Germany", in Poulain M. et al. *Thesim*, pp. 413-425 and from a conversation with Harald Lederer of the BAMF's statistical unit.

¹⁰¹ For more information on the SOEP, see <http://www.diw.de/english/sop/uebersicht/index.html>.

young people of immigrant origin”¹⁰², generating discussion of the pros and cons of extending observation of pupils beyond their actual nationality.

The statistical tables in the Berlin Senate’s report on migration and integration is now using three categories. Alongside aliens (*Ausländer*), a category of “Germans of immigrant origin” (*Deutsche mit Migrationshintergrund*) is added. The category paired with the latter is no longer “Germans”, but “Germans not of immigrant origin” (*Deutsche ohne Migrationshintergrund*). In fact, problems of terminology are quite as acute for minorities as they are for the majority. Identification of the *Aussiedler*, who have serious integration problems and probably face discrimination too, is another subject of debate.

The 2005 figures for Germany and the *Land* of Berlin are as follows:

	Germany	Berlin
Germans without immigrant origin	81.4	76.6
Foreigners	8.98	13.3
Germans of immigrant origin	9.7	10.1

Germans of immigrant origin already outnumber aliens for the country as a whole. As a result of its current migration situation, Berlin still has a large number of foreigners – but will go the same way. Demographic trends will thus suffice to create a need for radical revision of the categories used in statistics on integration and discrimination.

Since official action is highly decentralised in Germany, many initiatives come from the *Länder*, which have extensive powers to conduct their own policies. A network of cities and *Länder* – involving Berlin, Wiesbaden, Essen and Stuttgart – is currently setting up joint information systems to provide data on integration, and thus discrimination too. This monitoring of integration makes it necessary to adjust the law on data protection. No one doubts that the law will soon find itself facing major changes in the collection of statistics¹⁰³.

¹⁰² Arbeitstelle Interkulturelle Konflikte und Gesellschaftliche Integration (AKI) (2005) *Migrationshintergrund von Kindern und Jugendlichen : Wege zur Weiterentwicklung des amtlichen Statistik*, Bildungsreform Band 14, Bonn, Berlin, Bundesministerium für Bildung und Forschung.

¹⁰³ See discussion initiated by A. Dix in the above-mentioned publication of the Ministry of Education (2005), “Datenschutzrechtliche Aspekte bei der Erfassung des Migrationshintergrundes”, in Arbeitstelle Interkulturelle Konflikte und Gesellschaftliche Integration (AKI) (2005) *Migrationshintergrund von Kindern und Jugendlichen: Wege zur Weiterentwicklung des amtlichen Statistik*, Bildungsreform Vol. 4, Bonn, Berlin, Bundesministerium für Bildung und Forschung, pp. 91-102.

3.4 United Kingdom

In British data protection law (the Data Protection Act of 1998), all issues covered by anti-discrimination laws count as “sensitive data”. Their collection and dissemination are subject to special controls, and prohibitions similar to those laid down in Directive 95. These are distinctive in expressly permitting the processing of sensitive data in connection with equal opportunities policy. Exemptions are detailed in the guidelines and codes of practice published by the Information Commissioner, the independent authority responsible for monitoring application of the 1998 Act.

The Commissioner thus permits the collection of data on ethnic or racial origin, religious beliefs or other convictions, and physical or mental health “if this information is needed to identify or verify the existence or absence of equal treatment or access, and if security of personal data is guaranteed in collecting them”¹⁰⁴. Monitoring of ethnic or racial discrimination is provided for in the Race Relations Act of 1976, amended in 2000. The Data Protection Act accordingly authorises the collection of data on ethnic or racial origin if:

“the processing

- (a) is of sensitive personal data consisting of information as to racial or ethnic origin
- (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained.”¹⁰⁵

Under the Act, the Information Commissioner is giving a general authorisation without checking before each processing operation. It extends to all data collected in connection with equal opportunities monitoring: “the processing (a) is of information in categories relating to racial or ethnic origin, religious beliefs or other beliefs of a similar nature, physical or mental health or condition, (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment, (c) contains safeguards for the data subject.”¹⁰⁶ This decision is based on the codes of practice and standards developed by the Commission for Racial Equality.

The Commissioner also concedes that named data may be processed, if these are needed to make “reasonable adjustments”. Named data may also be required for monitoring working careers and assess the fairness of promotions or disciplinary proceedings: “effective equal opportunities monitoring may mean employers have to keep records about workers’ backgrounds and their work history in a form that identifies them. For example, if your organisation wants to track how many people with disabilities are being promoted and to what grades, it is difficult to see how this can be done without keeping records in a form that identifies them. Where tracking of individuals is involved it will not always be possible to use only anonymised information”. Similarly, consent is always firmly required. True, the Commissioner does stipulate, as generally required by law, that “employers are more likely to need the consent of workers if they are processing sensitive data rather than non-sensitive data”, and that, in this case, “the consent must be explicit”. But he still takes care to add that “even then, sensitive data can be processed without explicit consent in a number of circumstances, for example, where the processing is necessary to enable the employer to

¹⁰⁴ Information Commissioner, Codes of Practice. The Employment Practice Data Protection Code, 2002.

¹⁰⁵ Data Protection Act 1998, UK, schedule 3 (9)

¹⁰⁶ This and the following quotations are taken from *Codes of Practice. The Employment Practice Data Protection Code. Part 1 : Recruitment and selection*, Information Commissioner, 2002

comply with any legal obligation. Data about the racial or ethnic origin of workers may therefore be held in order to comply with the law relating to racial discrimination”.

The Data Protection Act and the Race Relations Act are thus linked by including equal treatment among the grounds on which the prohibition on collecting sensitive data may be waived. In this context, there are no further obstacles to the compilation of statistics on ethnicity or religion. It is clear, however, that the initial and decisive condition is the Race Relations Act’s explicit statement that collecting statistical data is a legal obligation. This duty applies to all firms with over 100 employees and, since the Act was amended in 2000, to local authorities and public-sector organisations¹⁰⁷.

Data collected

Although the British census does not collect data on citizenship, an “ethnic group” question has been asked since 1991. This is the outcome of a long process of testing and consultation, beginning in the late 1960s. In the wake of the Race Relations Act of 1976 and the establishment of the Commission for Racial Equality, the national statistical office (OPCS) launched a process for including a question on ethnic and racial origin in the 1981 census. However, the Government was against the use of terms referring to “race” in censuses, where answering was compulsory, while accepting it in social surveys, where answering was voluntary. The project is finally cancelled, and the 1981 census form did not include a question on ethnic origin, nor on parents’ place of birth (a question which had featured in the 1971 census, and later been dropped)¹⁰⁸.

After this first setback, gaps in the information on the situation of “ethnic minorities” provided by the census caused serious problems for the CRE. Very detailed statistical data are needed to implement positive action policies, and these the census could not provide¹⁰⁹. The Government accordingly asked the OPCS to resume its exploratory work, which finally led to inclusion of a question on “ethnic group” in the 1991 census. The nomenclature combined colour categories (White, Black British) with ethnic or national origin (Indian, Pakistani) and regional origin (Chinese). Between 1991 and 2001, extensive consultation with the stake holders and producers of the census led to revision of the questions. In response to calls for recognition of Britain’s social diversity, the category “white” was sub-divided, and several *mixed* categories were introduced. Finally, a question on religion was also added. In 2001, “minorities” represented 7.9% of the UK population, and 14.6% of these were of mixed, part-white descent. Use of these new categories in monitoring will certainly make it necessary to re-allocate *mixed* among minorities, but the various codes of practice have so far said nothing on this. Consultation has already started with a view to the 2011 census, and it looks as if a new question on national identity will be introduced to allow respondents to declare other types of ethno-cultural attachment, which are not covered by the ethnic question as it is conceived.

¹⁰⁷ For fuller information, see Stavo-Debaugé J. and Scott S., “Final Report on England: Medis project”, European Commission, 2004. http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/uk_en.pdf

¹⁰⁸ Bulmer M. (1996) “The Ethnic Question in the 1991 Census Population” in COLEMAN, David & SALT, John (éd.) *General demographic characteristics of the ethnic minority population*, Vol. 1, Londres, OPCS.

¹⁰⁹ Ni Bhrochláin M. (1990) “The ethnicity question for the 1991 Census: background and issues”, *Ethnic and racial studies*, volume 13, n°4.

Statistics have been systematically used in anti-discrimination and equal opportunity policies since the mid-90s. The results, however, have been mixed. The CRE reports that fewer than 60% of firms keep statistics. Anti-discrimination policies have not put an end to ethnic and racial inequality in employment, education and housing, and residential segregation and inter-ethnic barriers are still deeply entrenched in the community. Critics of “ethnic” statistics partly blame them for this “racialisation” of British society. Finally, as a result of the outrage caused by the London bombings in July 2005, British multiculturalism is being seriously challenged. Policy-makers are concerned at the failure of descendants of post-war immigrants to develop a national identity, and are promoting an integration model so far under-developed in the United Kingdom. To what extent will these new approaches affect anti-discrimination policies? So far, there has been no change in the scope of public action, and thus of the statistics collected.

Chapter 4 – Use of data and opinions on collecting them

The survey set out, not only to plumb discrepancies between regulations and their application, but also to find out what “players” thought about the implementation of the data protection laws, anti-discrimination requirements, and the impact of data protection laws on the pursuit of active and effective equal opportunities policies¹¹⁰.

The findings show that a high proportion of respondents tended to leave questions on their opinions unanswered (29% average for questions concerning “ethnic” data, about 15% for questions concerning the data protection laws), and also confirm their increasing awareness of the part played by statistics in anti-discrimination and anti-racism policies.

4.1 Opinion on the use of “ethnic” data

To varying degrees, the players consulted are all directly involved in combating racism and discrimination, but their views on the legitimacy and usefulness of statistics which reveal national, ethnic or racial origin are still likely to differ widely. National contexts are one of the determining factors here. Fields of activity also account for some answers: anti-discrimination bodies are often more alive to the strategic dimensions of positive action, while data protection authorities are more concerned with principles. Anti-racist organisations are sharply divided on these questions, some being very much in favour of “ethnic” statistics, while others call for a ban on collecting them. Finally, statistical institutes adopt different positions, depending on their national traditions and the role which they play in political action.

Our opinion-eliciting questions in the questionnaire cover the positive aspects of using statistics, and their negative effects, now or in the past (Table 2). A comparison of replies reveals sharp polarisation between negative statements, which reflect deep suspicion of these data, and positive statements, which insist on their usefulness, while minimising their present or past dangers.

The first significant point to emerge was a marked consensus on the positive side, reflecting a general conviction that statistics were more useful than dangerous. Thus, the suggestion that they would be useless provoked strong disagreement (84% complete or partial disagreement), with protection authorities and NGOs in the van¹¹¹. The anti-discrimination agencies all thought that these statistics were needed to promote equality, while the statistical institutes had more reservations on this point. The protection authorities and agencies all thought that the risks involved in collecting these data could be reduced, and 93.5% of respondents noted the role played by statistics in securing recognition for minorities.

The existence of a civil society demand for these statistics was not really confirmed, particularly by the protection authorities. This reflects the situation on the ground in the countries studied, where few people are likely to be campaigning for better statistics on discrimination. It may also, however, reflect a relative lack of communication between civil society and the institutions responsible for producing and supervising data (statistical institutes and data protection authorities). Users are rarely consulted by these institutions, which are more concerned with codes of practice and with the law, than with finding out what the public wants them to do.

¹¹⁰ Information on opinions has already been collected in various earlier surveys, including Reuter, Niklas - Timo Makkonen - Olli Oosi (2004) and Eurobaromètre on “data protection”, December 2003.

¹¹¹ The percentages are calculated on the replies.

Disagreement was strongest on the statements concerning the dangers of collecting “ethnic” data. Thus a large majority of respondents (63.5%) rejected the suggestion that this was a threat to individuals. Answers were sharply polarised, with data protection authorities arguing that these data were dangerous, while statistical institutes were more confident or at least more pragmatic in their answers. Agencies and NGOs were more divided on this question.

Similarly, only a small minority agreed that these data encouraged racism and racial discrimination. The agencies completely disagreed, while a few data protection authorities and NGOs agreed. Rejection of the idea that collecting “ethnic” data is intrinsically dangerous parallels the conviction that they are useful in the fight against discrimination. Finally, the suggestion that such data had provided a basis for persecution in the past was generally rejected. Obviously this varied with the country concerned, since those where people had suffered oppression or totalitarian rule in the past usually agreed. Many reservations and fears concerning the collection of “ethnic” data are due to experiences and practices of misuses in the past. It is harder to change the meanings attached to “ethnic statistics” in countries with painful memories and to increase the awareness that these statistics may have a positive use. Suspicion of the state, and fear that data would be used against individuals, were frequently voiced in German, French and Hungarian replies.

Opinions on laws and regulations (Table 3) reflected general satisfaction, and a belief that amending data protection laws was less the issue than using them more effectively to reconcile collecting sensitive data with protecting privacy and public liberties. Anti-discrimination bodies and certain NGOs tended to agree that data protection laws impeded action against racism. While regarding the level of protection as sufficient, half of them thought that the law made it harder to collect data, and should thus be amended and made more practical. This was also the view of several statistical institutes, which had to bend over backwards to satisfy the data protection regulations. On the other hand, the statistical institutes were quite as insistent as the data protection authorities on the importance of the law in their answers to the other questions.

Table 2 – Opinions concerning the collection of data related to national, ethnic or racial origin

	Complete agreement	Partial agreement	Partial disagreement	Complete disagreement	Total
1. These data are useless	4,8	11,1	22,2	61,9	100,0
2. These data pose a danger to individuals	9,5	27,0	27,0	36,5	100,0
3. Despite the possible misuses, these data are necessary for promoting equality and combating discrimination	52,4	33,3	6,3	7,9	100,0
4. It is possible to reduce the risks related to collection of these data	44,3	41,0	8,2	6,6	100,0
5. There is significant demand in civil society for collection of these data	26,2	37,7	26,2	9,8	100,0
6. Historically, these data have always served to persecute or exclude	9,8	32,8	32,8	24,6	100,0
7. The statistical recognition of minorities is an important step in their attainment of equality	43,5	50,0	6,5	0,0	100,0
8. Collecting these data encourages racism and intolerance	3,2	11,3	32,3	53,2	100,0

Source: ECRI-INED study, 2006.

Table 3 - Opinions concerning the legal framework for data protection

	Complete agreement	Partial agreement	Partial disagreement	Complete disagreement	Total
The level of protection afforded by the law is adequate	73,3	21,3	5,3	0,0	100,0
The application of the law impedes collection of data necessary for combating racism	9,1	24,2	22,7	43,9	100,0
Misuses of statistics are properly controlled	60,3	27,9	10,3	1,5	100,0
Amendments to the law are necessary to make it operational	13,0	18,8	15,9	52,2	100,0
There is a difference between the letter of the law and the way in which it is applied	2,9	17,6	20,6	58,8	100,0

Source: ECRI-INED study, 2006.

4.2 Collection of data – prospects

The final questions in the questionnaire concern prospects for the collection of data for combating discrimination. Respondents were asked which data would be needed, what guarantees should surround their collection, and whether they had expressed any public views on this question.

Views vary widely according to the type of institutions. Data protection authorities are there to ensure that the law is respected, and express no special views on the data required to combat discrimination. They do insist, however, that guarantees are needed when sensitive data is collected in countries which have no established tradition in this area. Conversely, many anti-discrimination agencies have more definite ideas on the kind of data needed, suggesting that they should indicate ethnic or racial origin, and pinpoint minorities exposed to discrimination, and also that existing data (e.g. on nationality or parents' country of birth) should be used to profile groups. These ideas are shared by many NGOs, although their position is less clear-cut. While considering that the collection of data on discrimination should be improved, some have reservations on statistics, associating them with state power and feeling that the dangers of abuse outweigh the benefits of gaining a fuller picture. Finally, the statistical institutes react like the data protection authorities: most of them will go along with future developments, but do not intend to play a leading role in producing new data on ethnic or racial discrimination.

Extracts from the reply of the Centre Against Racism (Sweden)

“On the one hand there is great political concern, in theory, about the registration of ethnic statistics. On the other hand, various government agencies, private organisations, politicians etc. focus to a great deal on ethnic issues. References are clearly made to ethnic statistics, or assumptions about statistics, by most of the opponents of "ethnic" registration. It is just that many of those assumptions are based on publicly maintained records concerning all individuals in Sweden. These records specify the birthplace of everyone in Sweden, and in most cases the birthplace of the parents of those residing in Sweden. While skin colour is not registered, racialized assumptions can and are often made based on place of birth. (...)

The fear of keeping ethnic statistics is often related to European and Swedish history prior to WW II - with the consequences involved. Sweden did have some ethnic registration at the time, and the purposes are considered to be dubious and often racist today. But since WW II there has long been a denial of ethnic discrimination in general. One way to avoid examining the issue is by not knowing. And you can avoid knowing by not collecting relevant statistics. This is often accomplished by saying that it could lead to racism and/or discrimination if we gather relevant information.”

There is relatively general agreement that arrangements for collection must be improved, with two slightly different emphases: 1) securing recognition of the legitimacy of collecting statistics on ethnic origin or religion, 2) making collection, as currently practised, more effective, e.g. by defining the groups concerned more precisely. The problems in each case are different. In the first, they are political, and aggravated by laws which reinforce the political taboo on spotlighting groups which are targets of discrimination. In the second, methodology is the more important issue, even if – as we have seen with Hungary - it raises some legal questions too.

Whatever the data, requirements concerning guarantees are stringent, reflecting a firm determination to leave no stone unturned in checking abuses. Memories of the criminal misuse of files during the Second World War are very present in replies to the questionnaire. The former Soviet countries, too, have not forgotten how statistical registration was used as an instrument of totalitarian control. Among guarantees essential when sensitive data are being collected, anonymity is mentioned first. Self-declaration is also cited frequently, as is the distinction between administrative files and files used for statistical or scientific purposes. This distinction certainly holds one of the keys to exploiting those provisions in data protection law which facilitate the statistical or scientific processing of sensitive data.

Conclusion: towards a “reasonable accommodation”?

In its latest report¹¹² to the Council and European Parliament on application of Directive 2000/43/EC, the European Commission speaks of the crucial role played by statistics in activating anti-discrimination policies and increasing their capacity to ensure social cohesion and promote diversity and equality. It also refers to the persistent misunderstandings, and indeed strategic manoeuvres, which dog relations between data protection and the production of statistics on discrimination:

“The scarcity of ethnic data in most Member States might hinder proper monitoring of the application of Community legislation.

There have been objections to the collection of such data on the grounds that it would breach the provisions of the EU Data Protection Directive. This does not reflect the true situation. The Directive generally prohibits the processing of sensitive personal data. However, certain exemptions to this rule are provided for, including where “the data subject has given his explicit consent to the processing of those data”; or “processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment”. Furthermore, “subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions”. Thus, it is for the Member States to decide whether or not ethnic data should be collected to produce statistics for combating discrimination, provided that the safeguards set out in the Data Protection Directive are respected.”¹¹³

At the end of this study, we are faced with the task of deciding, as ECRI has asked us to do, whether the data protection laws really hinder collection of the data needed to combat racial discrimination, or whether the unsatisfactory state of statistics on this type of discrimination is not essentially due to other factors.

An examination of the various data protection laws adopted by Council of Europe countries and an analysis of the ways in which they are implemented, confirms that “ethnic” data are, as “sensitive data”, systematically the subject of special controls. In many countries, the collection of “sensitive data” is even formally prohibited, unless certain conditions are fulfilled. This conditional prohibition is ambiguous, and does not facilitate interpretation of the data protection laws. It implies, first of all, that “sensitive data” can have harmful effects for the people they concern, and so require special vigilance when they are being processed. To ensure that such vigilance is exercised, the law gives the data protection authority power to review the proposed operation beforehand, while also imposing a general prohibition. As the legislator sees it, this is not a question of really forbidding the collection of such data, but providing credible safeguards. “Sensitive data” may thus be collected within a predetermined regulatory framework.

Literally taken, however, the law does impose a ban, and this is what political decision-makers and public opinion remember, although the frequently heard assertion that the data protection laws make it impossible to collect “ethnic” data is unfounded. At the same time, the assertion that these laws make it hard to collect such data is partly true. The general effect of the stringent conditions imposed is a drastic reduction in the collection of “ethnic” data, unless the law specifically encourages this.

¹¹² COM(2006) 643 du 30/10/2006.

¹¹³ COM(2006) 643 du 30/10/2006.

In fact, the collection of “ethnic” data must satisfy three main conditions: there must be explicit consent, collection must be in the public interest, or it must be a legal obligation. The first two give the data protection authority the main role in deciding whether the proposed processing operation is legitimate. In a sense, the public authorities here relinquish their powers to an independent agency. However, it is not always easy for data protection authorities to decide whether the aim of the operation really justifies lifting the general prohibition. “Ethnic” data are rarely processed when the data protection authority is the authorising body, essentially because data producers expect a refusal and so engage in self-censorship. The third condition, legal obligation, thus seems to offer the only real key to setting up a monitoring system.

When anti-discrimination or minority protection laws require this more or less explicitly, the reservations contained in data protection law are automatically lifted. The processing of “ethnic” data then becomes a routine matter, backed, like all statistical operations, by guarantees of confidentiality, informed consent and methodological rigour. To some extent, “ethnic” data thus become ordinary data and lose their special status. All of this is technically permissible, because the law on racial discrimination promotes it. Making the collection of “ethnic” data an everyday matter also reflects the generalised use of “ethnic” labels to describe oneself and others.

The United Kingdom, the Netherlands and many central and east European countries illustrate this connection, which might be extended to other Council of Europe member states. One of the factors which limit European laws and regulations which prohibit racial discrimination is the absence of explicit regulations on the role of statistics in the implementation of laws and policies designed to promote equality¹¹⁴. Neither Article 14 of the European Convention on Human Rights nor Protocol No. 12, which contains a general non-discrimination clause, tackle the question of “ethnic” data. We also know that Directive 2000/43/EC is deliberately vague on the role of statistics in legal action. They are mentioned only in recital 15, and then in a relatively non-binding form, being cited among other legal proofs of the existence of indirect discrimination¹¹⁵.

However, by bringing indirect discrimination into Community law and the law of member states, the Directives make it *logically* essential to produce statistics giving a picture of the extent and characteristics of racial discrimination, assessing the impact of policies, and facilitating legal proceedings. However, they leave member states to decide whether to use these statistics, and define the form they are to take.

Looking at the wide range of practices and of ways in which statistics are used against discrimination, one can discern some pointers towards devising a co-ordinated European strategy. However, there is no tried and easily copied recipe for the collection of “ethnic” data. The United Kingdom system has no equivalent in other Council of Europe countries. Each country devises its own nomenclature, which reflects its own history. The linkage between collecting data and using them for anti-discrimination policy also varies hugely. The general conclusion is that, while nearly half the Council of Europe countries collect “ethnic” data in their official statistics, very few really use them to combat racial discrimination.

Reconciling a high level of data protection with the collection of “ethnic” data is possible, but it requires political determination. The real issue, in other words, is not legal technique, but

¹¹⁴ See Makkonen T. 2007, *Measuring discrimination: Data collection and EU Equality Law*, report for the European Network of Legal Experts in the non-discrimination field, Luxembourg, European Commission.

¹¹⁵ The exact wording of recital 15 of the “race” Directive (2000/43/EC) stipulates: “The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means, including on the basis of statistical evidence”.

the basic legitimacy of compiling “ethnic” data. As the European Commission suggests in the argument reproduced at the beginning of this conclusion, it is up to public authorities in the member states to avail of provisions in data protection laws which make it possible to collect “sensitive data”. The decisive factor here is how one rates the aim pursued in doing so: do Council of Europe countries which do not collect ethnic data regard them as necessary to combating racism and racial discrimination? The current debate in many countries suggest that cost/benefit analysis of the pros and cons of compiling “ethnic” data comes down on the side of doing nothing. In this context, many countries seem to have a pragmatic strategy which involves beating a prudent retreat behind their data protection laws. Nonetheless, it would seem both possible and necessary to reconcile effective protection of privacy and public liberties with collection of the data needed to combat racial discrimination. A reasonable compromise can be secured on the basis of democratic consensus. This is an area where good practices do exist in Europe – and they deserve looking at.

Appendix I – Survey methodology

Questionnaire-based survey

To supplement the available information on data protection and anti-discrimination legislation and practice, a questionnaire-based survey was conducted among the four categories of "institutions" active in the relevant fields. The questionnaire contains factual questions on the legislation governing production of data, in particular concerning national or ethnic origin, religion, language and nationality, and related practice in the respondent institution's country. These are followed by a number of questions aimed at sounding out the institution's opinion on the degree of protection afforded by law and data requirements for combating discrimination.

Each "institution" completed a specific questionnaire including a core common to all the institutions and further questions peculiar to its field of activity (data protection, production of statistics, protection of human rights and fighting discrimination). A sample questionnaire can be found in Appendix 2.

The questionnaires were sent to a non-exhaustive list of institutions in each Council of Europe member state. Responses varied depending on the type of institution, as can be seen from the summary table below. Of a total of 88 completed questionnaires nearly two-thirds were returned by statistics institutes or data protection authorities. Many institutions sent additional documents with the completed questionnaire, in particular descriptions of nomenclatures used in censuses. Some respondents submitted notes on the subject of the survey, which considerably enhanced our documentation. We have referred to these notes in this report wherever possible.

Questionnaires received

	Data protection authorities	Anti-discrimination agencies	Statistics institutes	Organisations to combat racism and safeguard human rights	Total
Questionnaires sent	35	25	42	35	137
Questionnaires returned	25	18	33	12	88

People met during the missions:

Germany:

Heiner Bielefeldt and Petra Follmar-Otto, Deutsches Institut für Menschenrechte, Berlin

Jochen Hayungs, Arbeitsstab der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration, Berlin

Robin Schneider, Der Beauftragte des Senats von Berlin für Integration und Migration, Berlin

Karen Schönwälder, Sociologist, Wissenschaftszentrum Berlin für Sozialforschung, Berlin

Harald Lederer, Bundesamt für Migration und Flüchtlinge, Statistics Unit, Nuremberg

Marco Peucker, Sociologist, Europäisches Forum für Migrationsstudien, German National Focal Point for EUMC, Bamberg

Hungary:

Gabor Rosza, Manuell Kovacs, Demographers, National Statistics Institute, Budapest

M. Szücs, Director of the Census Unit, National Statistics Institute, Budapest

Jenö Kaltenbach, Ombudsman on the rights of ethnic and national minorities, Budapest

Attila Péterfalvi, Commissioner for data protection, Budapest

Dimitrina Petrova, Director of the European Roma Rights Centre, Budapest

Lilla Farkas, Lawyer, Expert on anti-discrimination at the European Commission, Budapest

Thomas Kadár, Authority for Equal Treatment, Budapest

Andras Kadar, Helsinki Committee, Budapest

Appendix II - Questionnaire addressed to the Data Protection Authorities

QUESTIONNAIRE ON THE LEGISLATIVE FRAMEWORK, ETHICAL PRINCIPLES AND PRACTICES RELATING TO “ETHNIC” DATA COLLECTION IN COUNCIL OF EUROPE MEMBER COUNTRIES

This questionnaire is intended to gather information on your country's legislation and practice relating to the collection of statistical data of an ethnic nature.

By “legislation”, the questionnaire refers to the laws governing the production, recording and distribution of personal and/or statistical data, meaning on the one hand the general laws on data protection and on the other hand the laws that regulate statistical activity.

By “ethnic data”, the questionnaire refers to all data alluding to national, ethnic or racial origin, religion, language or nationality (i.e. citizenship).

When completing the questionnaire, you are requested to accept these considerations as characterising “ethnic data”, or to give them specific treatment if they are separately identified in legislation or practice.

The questionnaire has been sent to the organisations of the 46 Council of Europe member states. It contains questions which may not be applicable to your situation. If so, mark “question irrelevant”.

Thank you for taking the time to answer the questions that concern your organisation.

Please send the completed questionnaire to
Ms Sylvia LEHMANN, e-mail: sylvia.lehmann@coe.int

Should you have any questions regarding the contents of this questionnaire, please contact
Mr Patrick SIMON, e-mail: simon@ined.fr

Data protection authority

Country:

Name of organisation:

Respondent's identity:

Department to which respondent is attached:

Date of completing the questionnaire:

Questions of vocabulary

Is the term "ethnic or national origin" used in your country? (Indicate the terminology employed in the national language.)

.....
.....
.....
.....

According to what definition?

.....
.....
.....
.....

Is any distinction drawn between citizenship and nationality in your country?

yes ☐

no ☐

If so, how are they differentiated?

.....
.....
.....
.....

According to your organisation, which variables make reference, directly or indirectly, to ethnic or national origin?

.....
.....
.....
.....

Legislation

Has a definition of “sensitive data” been prescribed by the laws establishing the framework and the limits applicable to the collection of computerised personal data, including statistical data?

yes ☐

no ☐

If so, give a list of these “sensitive data” :

.....

.....

.....

.....

In these laws, does ethnic origin have a definition?

yes ☐

no ☐

If so, what is the definition?

.....

.....

.....

.....

If not, what is the designation under which ethnic origin is taken into account?

.....

.....

.....

.....

Do these laws prescribe particular requirements for the collection of data registering national, ethnic or racial origin, religion, language or nationality?

yes ☐

no ☐

If so, please itemise these requirements for each indicator mentioned below.

National, ethnic or racial origin:

.....

.....

.....

.....

Religion:

.....

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.....

Language:

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Nationality:

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.....

In your law, is the concept of “personal data” distinguished from that of “statistical data”?

yes ☐

no ☐

If so, could you specify the implications of this distinction from the data collection standpoint, giving examples?

.....

.....

.....

.....

Is statistical data collection covered by a data protection law and a law on statistics?

yes ☐

no ☐

Are any conflicts of legal interpretation between these laws occurred (if so, please give some examples of conflicts and their outcomes) ?

yes ☐

no ☐

.....

.....

.....

Has your institution built up a body of case-law on collection of data registering ethnic origin, religion, language or nationality? (Reply separately for each of these items and give the references of the case-law relating to them.)

National, ethnic or racial origin:

.....

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.....

.....

Religion:

.....

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.....

.....

Language:

.....

.....

.....

.....

Nationality:

.....

How many breaches or infringements of the confidentiality of data have you recorded since 2000 (breakdown the figures by domains) ?

.....

Within the breaches and infringements of the restrictions or bans on collection of data, could you set out some examples concerning national, ethnic or racial origin, religion, language or nationality?

National, ethnic or racial origin:

.....

Religion:

.....

Language:

.....

Nationality:

.....

Indicate the stance of your organisation on the following propositions as to the legal framework for data protection:

	Complete agreement	Partial agreement	Partial disagreement	Complete disagreement
The level of protection afforded by the law is adequate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The application of the law impedes collection of data necessary for combating racism	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Misuses of the statistics are properly controlled	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amendments to the law are necessary to make it operational	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
There is a difference between the letter of the law and the way in which it is applied	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Data collection

1) National, ethnic or racial origin

Are statistical data on the national, ethnic or racial origin of the population collected in your country?

yes ☐

no ☐

If so:

From which types of source (multiple answers are possible):

- ☐ population registers
- ☐ censuses
- ☐ administrative files
- ☐ scientific studies and sample surveys

We thank you for providing a copy of the nomenclature most frequently used for presenting these data and for attaching it to the questionnaire

Which methods are used to record ethnic origin?

- ☐ Factual questions on the country of birth and nationality of individuals and their parents
- ☐ Questions involving self-identification
- ☐ Ethnic origin is a civil status variable

Are the data regularly published, and in what form?

- ☐ Specific tables on ethnic origin
- ☐ Single variable in the publications on population statistics or social statistics
- ☐ No publication of these data

If not:

For what reason(s) are these statistics not collected (multiple answers are possible):

- ☐ Because the law prohibits it
- ☐ Because there is no definition of ethnic origin
- ☐ Because it serves no purpose
- ☐ Because it is dangerous
- ☐ Other reasons; please specify.....

2) Religion

Are statistical data on religion collected in your country?

yes ☐

no ☐

If so:

How is religion defined in the statistics?

.....

.....

.....

.....

In which types of source (multiple answers are possible):

- ☐ population registers
- ☐ censuses
- ☐ administrative files
- ☐ scientific studies and sample surveys

We thank you for providing a copy of the nomenclature most frequently used for presenting these data and for attaching it to the questionnaire

Are the data regularly published, and in what form?

- ☐ Specific tables on religion
- ☐ Single variable in the publications on population statistics or social statistics
- ☐ No publication of these data

If not:

For what reason(s) are these statistics not collected (multiple answers are possible):

- ☐ Because the law prohibits it
- ☐ Because there is no definition of religion
- ☐ Because it serves no purpose
- ☐ Because it is dangerous
- ☐ Other reasons; please specify.....

3) Language

Are statistical data on language collected in your country?

yes ☐

no ☐

If so:

How is language defined in the statistics? (If defined according to several characteristics of language, please indicate each one.)

.....
.....
.....
.....

In which types of source (multiple answers are possible):

- ☐ population registers
- ☐ censuses
- ☐ administrative files
- ☐ scientific studies and sample surveys

We thank you for providing a copy of the nomenclature most frequently used for presenting these data and for attaching it to the questionnaire

Are the data regularly published, and in what form?

- ☐ Specific tables on language
- ☐ Single variable in the publications on population statistics or social statistics
- ☐ No publication of these data

If not:

For what reason(s) are these statistics not collected (multiple answers are possible):

- ☐ Because the law prohibits it
- ☐ Because there is no definition of religion
- ☐ Because it serves no purpose
- ☐ Because it is dangerous
- ☐ Other reasons; please specify.....

We now wish to ask you for the opinion of your organisation on data indicating national, ethnic or racial origin

	Complete agreement	Partial agreement	Partial disagreement	Complete disagreement
1. These data are useless	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. These data pose a danger to individuals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Despite the possible misuses, these data are necessary for promoting equality and combating discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. It is possible to reduce the risks related to collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. There is a significant demand in civil society for collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Historically, these data have always served to persecute or exclude	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The statistical recognition of minorities is an important step in their attainment of equality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Collecting these data encourages racism and intolerance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each reply to propositions 1-8, you may make explanatory remarks below:

[illegible]

We now wish to ask you for the opinion of your organisation on data indicating religion

	Complete agreement	Partial agreement	Partial disagreement	Complete disagreement
1. These data are useless	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. These data pose a danger to individuals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Despite the possible misuses, these data are necessary for promoting equality and combating discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. It is possible to reduce the risks related to collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. There is a significant demand in civil society for collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Historically, these data have always served to persecute or exclude	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The statistical recognition of minorities is an important step in their attainment of equality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Collecting these data encourages racism and intolerance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each reply to propositions 1-8, you may make explanatory remarks below:

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We now wish to ask you for the opinion of your organisation on data indicating language

	Complete agreement	Partial agreement	Partial disagreement	Complete disagreement
1. These data are useless	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. These data pose a danger to individuals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Despite the possible misuses, these data are necessary for promoting equality and combating discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. It is possible to reduce the risks related to collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. There is a significant demand in civil society for collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Historically, these data have always served to persecute or exclude	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The statistical recognition of minorities is an important step in their attainment of equality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Collecting these data encourages racism and intolerance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each reply to propositions 1-8, you may make explanatory remarks below:

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We now wish to ask you for the opinion of your organisation on data indicating nationality

	Complete agreement	Partial agreement	Partial disagreement	Complete disagreement
1. These data are useless	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. These data pose a danger to individuals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Despite the possible misuses, these data are necessary for promoting equality and combating discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. It is possible to reduce the risks related to collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. There is a significant demand in civil society for collection of these data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Historically, these data have always served to persecute or exclude	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The statistical recognition of minorities is an important step in their attainment of equality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Collecting these data encourages racism and intolerance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each reply to propositions 1-8, you may make explanatory remarks below:

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In the event that collection of data registering national, ethnic and racial origin, religion, language or nationality is authorised, whether freely or conditionally, is there a large production and distribution of statistical tables setting out this information? (Reply separately for each category.)

National, ethnic or racial origin:

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Religion:

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Language:

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Nationality:

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For your institution, which types of statistics would be necessary for combating discrimination and racism? (Please explain your answer.)

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Subject to which guarantees, and under which arrangements, should they be collected?

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Has your institution adopted an official position on this question?

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Appendix III – Table of laws

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Albania</i>	STCE 108 (1/6/2005)	Law 8517 on the Protection of Personal Data - July 22, 1999	Article 2 : "Personal sensitive data - shall mean such data as: - racial and ethnic origin, political opinion or affiliation, religious and other convictions; - health conditions, sexual life and criminal records".	Provisions of this law shall not apply on the following cases: a) Processing of personal data from the data subject itself; b) Processing of anonymous data; c) Personal data obtained in the course of criminal investigations and court proceedings; ç) Processing of data classified state secret; d) Processing of data for the purposes of national security, crime prevention and protection of public health e) Processing of data for the purpose of population's registration.	People's Advocate Blv. Deshmoret e Kombitquot; 3, ALB-Tirana Phone: ++ 355 4 232 462 Fax: ++ 355 4 226 095 E-mail ap@avokatipopullit.gov.al	Law No. 8669 dated 26.10.2000 On the general census of population and dwellings
<i>Armenia</i>		RA Law On Personal Data, 2003			N.C	

Countries	International conventions on data protection	Data Protection	Sensitive data	Exceptions from restrictions	Data Protection Office	Other relevant provisions
Austria	STCE 108 (1/7/1988) Directive 95(46) (17/8/1999)	Bundesgesetz über den Schutz personenbezogener Daten (Datenschutzgesetz 2000), BGBl. I Nr. 165/1999, idF. BGBl. I Nr. 136/2001 of 17.08.1999 that applies to all processing by automatic means.	Sensitive Data" ("Data deserving special protection") ["sensible Daten" ("besonders schutzwürdige Daten")]: Data relating to natural persons concerning their racial or ethnic origin, political opinion, trade-union membership, religious or philosophical beliefs, and data concerning health or sex life.	Sect. 9 (1) The use of sensitive data does not infringe interests in secrecy deserving protection only and exclusively if 1. the data subject [Betroffener] has obviously made public the data himself or 2. the data are used only in indirectly personal form or 3. the obligation or authorisation to use the data is stipulated by laws, insofar as these serve an important public interest, or 4. the use is made by a controller of the public sector in fulfilment of his obligation to give inter-authority assistance or 5. data are used that concern solely the exercise of a public office by the data subject or 6. the data subject has unambiguously given his consent, which can be revoked at any time, the revocation making any further use of the data illegal, or 7. the processing or transmission [Übermittlung] is in the vital interest of the data subject and his consent cannot be obtained in time or 8. the use is in the vital interest of a third party or 9. the use is necessary for establishment, exercise or defence of legal claims of the controller before a public authority and the data were collected legitimately or 10. data are used for private purposes pursuant to sect. 45 or for scientific research or statistics pursuant to sect. 46 or to inform and question the data subject pursuant to sect. 47 or 11. the use is required according to the rights and duties of the controller in the field of employment law and civil service regulations [footnote 7] and, and is legitimate according to specific legal provisions; the rights of the labour councils according to the Arbeitsverfassungsgesetz [footnote 8] with regard to the use of data [Datenverwendung] remain unaffected, or 12. the data are required for the purposes of preventive medicine, medical diagnosis, the provision of health care or treatment or the management of health-care services, and the use of data is performed by medical personnel or other persons subject to an equivalent duty of secrecy, or 13. non-profit-organisations with a political, philosophical, religious or trade-union aim process data revealing the political opinion or philosophical beliefs of natural persons in the course of their legitimate activities, as long as these are data of members, sponsors or other persons who display an interest in the aim of the organisation on a regular basis; these data shall not be disclosed to a third party without the consent of the data subjects unless otherwise provided for by law.	Direktor Buro der Datenschutzkommission und des Datenschutzzentrums Bundeskanzleramt Ballhausplatz 1 A-1014 Vienne Site web : www.bka.gv.at/datschutz	Section 5 para. 3 Federal Act on Statistics 2000 personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership or on a persons health or sex life shall only be collected when regulated by federal law (e.g. Federal Act on Education Documentation; "Bildungsdokumentationsgesetz", Federal Law Gazette part I No. 12/2002 last amended by Federal Law Gazette part I No. 169/2002. Section 2 para 1 Notification of Residence Act, basically all persons residing in Austria are obliged to notify their presence in Austria to the local notification authority ("Meldebehörde") indicating e.g. their name, nationality, date and place of birth. Section 14 para. 1 of the Act explicitly prohibits selection of data records from the Register according to the religious belief of the data subjects.

Countries	International conventions on data protection	Data Protection	Sensitive data	Exceptions from restrictions	Data Protection Office	Other relevant provisions
Azerbaijan	Pas de ratification de la convention STE 108	Law of Azerbaijan Republic on Data, Data Processing and Data Protection, 1999				
Belgium	STCE 108 (1/9/1993) Directive 95(46) (11/12/1998)	Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel du 8 décembre 1992 version coordonnée de la loi relative à la protection des données à caractère personnel du 8 décembre 1992 (11 décembre 1998) Arrêté royal du 13 mars 2001 portant exécution de la loi du 8 décembre 1992 relative à la protection des données personnelles Loi du 24 février 2003 sur le statut de l'autorité de protection des données.	Art. 6. <L 1998-12-11/54, art. 9, 004; En vigueur : 01-09-2001> § 1. Le traitement de données à caractère personnel qui révèle l'origine raciale ou ethnique, les opinions politiques, les convictions religieuses ou philosophiques, l'appartenance syndicale, ainsi que le traitement des données relatives à la vie sexuelle, est interdit.	Similar or close to the list in Directive 95	Commission pour la protection de la vie privée Rue Haute, 139 B-1000 Bruxelles Site web : www.privacy.fgov.be/	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Bosnia-Herzegovina</i>	STCE 108 (1/7/2006)	*Law on the Protection of Personal Data, enacted 28 December 2001 *Law on Central Registry and Data Exchange, 28 December 2001 *Law on the Personal Identification Number, 28 December 2001 *Law on Identity Cards of Citizens of Bosnia and Herzegovina 28 December 2001 *Freedom of Access to Information Act, adopted October 2000				
<i>Bulgaria</i>	STCE 108 (1/1/2003)	Personal Data Protection Act, 2002	Art 5 (1) personal data should not be disclosed when related to : 1. Racial or ethnic origin 2. Political opinions, religious or philosophical beliefs, membership in political parties or organizations, associations for religious, philosophical or trade-union purposes; 3. Human health, sexual life or human genome.	Art 5(2) Exceptions to the above list : for the purposes of labour legislation, with the consent of the data subject, for protection of life, health etc.	Bulgarian Commission for Personal Data Protection 1 Dondukov bul. BG-1000 Sofia	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Croatia</i>	STCE 108 (1/10/2005)	Loi sur la protection des données personnelles (In this field Croatia has also two Regulations that are by laws: Regulation on the method of maintaining and the form of the records on personal data filing system (Official Gazette, 105/04, 28 July 2004) and Regulation on the method of storing and special technical protection measures of special categories of personal data (Official Gazette, 139/04, 6 October 2004).	Article 8 It is prohibited to collect and subsequently process personal data pertaining to racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, health or sex life as well as personal data regarding criminal and misdemeanour proceedings.	subsequently processed without the consent of the data subject: - for the purpose of carrying out legal obligations to which personal data filing system controller is subject, or - for the purpose of protecting the life or physical integrity of the data subject or another person in cases when the data subject is physically or legally unable to give his/her consent, or - if data processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller personal data filing system controller, or - if the data subject discloses such data on his/her own. if the processing is carried out within the scope of legal activity of an institution, association or any other non-profit body with political, religious or other aim, provided that such processing relates solely to the members of the body and that the data obtained are not disclosed to a third party without a prior consent of the data subject."	Croatian Personal Data Protection Agency Pantovcak 258 HR-10000 Zagreb Tel. +385 1 4609-000 Fax +385 1 4609-099 e-mail: azop@azop.hr or info@azop.hr www.azop.hr/default.asp?jezik=2	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Cyprus</i>	STCE 108 (1/6/2002) Directive 95(46) (2003)	The legislation on the protection of personal data, the Processing of Personal Data (Protection of the Individual) Law of 2001, its amendment (Law No. 37(I)/2003), and section 106 of The Regulation of Electronic Communications and Postal Services Law of 2004 (112(I)/2004) that deals with unsolicited communication (spam).	"sensitive data" means data concerning racial or ethnic origin, political convictions, religious or philosophical beliefs, participation in a body, association and trade union, health, sex life and erotic orientation as well as data relevant to criminal prosecutions or convictions.	Similar or close to the list in Directive 95	Commissioner for Personal Data Protection Ms Goulla Frangou 40, Th. Dervis Street CY-1066 Nicosia Tel. +357/22/818 456 or 476 Fax. +357/22/304565 e-mail: commissioner@dataprotection.gov.cy www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/index_en/index_en?opendocument	
<i>Czech Republic</i>	STCE 108 (1/11/2001) Directive 95(46)	Consolidated version of the Personal Data Protection Act Act 101 of April 4, 2000 on the Protection of Personal Data and on Amendment to Some Acts.	"sensitive data" shall mean personal data revealing nationality, racial or ethnic origin, political attitudes, trade-union membership, religious and philosophical beliefs, conviction of a criminal act, health status and sexual life of the data subject, as well as any biometric data of the data subject	Similar or close to the list in Directive 95	Office for Personal Data Protection www.uoou.cz/eng/101_2000.php3	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Denmark</i>	STCE 108 (1/2/1990) Directive 95(46) (31/5/2000)	Act on Processing of Personal Data published in "Lovtidende" (Official Journal) on 2 June 2000	7. - (1) No processing may take place of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning health or sex life.	<p>1. the data subject has given his explicit consent to the processing of such data; or</p> <p>2. processing is necessary to protect the vital interests of the data subject or of another person where the person concerned is physically or legally incapable of giving his consent; or</p> <p>3. the processing relates to data which have been made public by the data subject; or</p> <p>4. the processing is necessary for the establishment, exercise or defence of legal claims.</p> <p>(4) Processing may be carried out in the course of its legitimate activities by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade union aim of the data mentioned in subsection (1) relating to the members of the body or to persons who have regular contact with it in connection with its purposes. Disclosure of such data may only take place if the data subject has given his express consent or if the processing is covered by subsection (2) 2 to 4 or subsection (3).</p> <p>(5) The provision laid down in subsection (1) shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health care services, and where those data are processed by a health professional subject to a statutory obligation of professional secrecy.</p> <p>(6) Processing of the data mentioned in subsection (1) may take place where the processing is required for the performance by an official authority of its tasks in the area of criminal law.</p> <p>(7) Exemptions may further be laid down from the provision in subsection (1) where the processing of data takes place for reasons of substantial public interests. The supervisory authority shall give its authorisation in such cases. The processing may be made subject to specific conditions. The supervisory authority shall notify the Commission of any derogation.</p> <p>(8) No automatic filing systems may be kept on behalf of a public administration containing data on political affiliations which are not open to the public.</p>	Datatilsynet Christians Brygge 28 4 sal DK-1559 Copenhagen Site web : www.datatilsynet.dk	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Estonia</i>	STCE 108 (1/3/2002) Directive 95(46) (12/2/2003)	Personal Data Protection Act - 2003 (amended 2004)	(3) Sensitive personal data are: 1) data revealing political opinions, or religious or philosophical beliefs, except data relating to being a member of legal persons in private law registered pursuant to procedure provided by law; (17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941) 2) data revealing ethnic or racial origin; 3) data relating to state of health or sexual life; 4) data relating to criminal convictions and judicial punishments; 5) data relating to a criminal proceeding. (4) The list of sensitive personal data may be supplemented by an Act regulating the corresponding area. (5) Collected statistical data relating to a natural person are not personal data if it is not possible to identify the person relating to whom the data are collected.	According to § 14 of the Personal Data Protection Act: "(3) Processing of sensitive personal data and private personal data without the consent of a data subject is permitted: 1) for performance of an obligation prescribed by law or international agreements; 2) for protection of the life, health or freedom of the data subject or other person. (4) Transmission of sensitive personal data and private personal data or grant of access to the data to third persons without the consent of a data subject is permitted: 1) if the person to whom the data are transmitted processes sensitive personal data or private personal data for performance of an obligation prescribed by law or international agreements; 2) for protection of the life, health or freedom of the data subject or other person."	Estonian Data Protection Inspectorate Väike-Ameerika 19 EE-10129 Tallinn	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Finland</i>	STCE 108 (1/4/1992) Directive 95(46) (1/12/2000)	Personal Data Act (523/1999), amendment in 2000	Section 11 — Prohibition to process sensitive data The processing of sensitive data is prohibited. Personal data are deemed to be sensitive, if they relate to or are intended to relate to: (1) race or ethnic origin; (2) the social, political or religious affiliation or trade-union membership of a person; (3) a criminal act, punishment or other criminal sanction; (4) the state of health, illness or handicap of a person or the treatment or other comparable measures directed at the person; (5) the sexual preferences or sex life of a person; or (6) the social welfare needs of a person or the benefits, support or other social welfare assistance received by the person.	Similar or close to the list in Directive 95	Office of the Data Protection Ombudsman Albertinkatu 25 PO Box 315 FIN-00181 Helsinki Site web : www.tietosuoja.fi/index.htm	
<i>France</i>	STCE 108 (1/7/1985) Directive 95(46) (24/8/2004)	Loi 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, amendée par la loi 2004-801 du 24 août 2004	Article 8 (I). - Il est interdit de collecter ou de traiter des données à caractère personnel qui font apparaître, directement ou indirectement, les origines raciales ou ethniques, les opinions politiques, philosophiques ou religieuses ou l'appartenance syndicale des personnes, ou qui sont relatives à la santé ou à la vie sexuelle de celles-ci.	Similar or close to the list in Directive 95	Commission nationale de l'informatique et des libertés 21, rue Saint-Guillaume F-75340 Paris cedex 07 Site web : www.cnil.fr	
<i>Georgia</i>	STCE 108 (1/4/2006)	Article 9. Protection of Personal Data (Law on General Census of Population of Georgia, 2001)				

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Germany</i>	STCE 108 (1/10/1985) Directive 95(46) (18/5/2001)	Loi fédérale du 21 janvier 1977 portant protection contre l'emploi abusif de données d'identification personnelle dans le cadre du traitement de données, modifiée par la loi fédérale de protection des données du 20 décembre 1990 et amendée par la loi du 14 septembre 1994 ; Législations dans les Länder ; Loi fédérale de protection des données - 2001 (Bundesdatenschutzgesetz (BDSG)). Bekanntmachung der Neufassung (revised version) des Bundesdatenschutzgesetzes, Vom 14. Januar 2003, (BGBl. I S. 66).	(9) "Special categories of personal data" means information on a person's racial and ethnic origin, political opinions, religious or philosophical convictions, union membership, health or sex life.		"Der Bundesbeauftragte für den Datenschutz (autorité fédérale) Husarenstraße 30 D-53117 Bonn Site web : www.datenschutz.de oder : www.bfd.bund.de/information/engl_corner.html	
<i>Greece</i>	STCE 108 (1/12/1995) Directive 95(46) (10/4/1997)	Law 2472/1997 on the Protection of Individuals with regard to the Processing of Personal Data (as amended)	"Sensitive data" shall mean the data referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership to a society, association or trade union, health, social welfare and sexual life as well as criminal charges or convictions.	Similar or close to the list in Directive 95	Hellenic Data Protection Authority Kifisias Avenue 1-3 PC 115 23 Ampelokipi GR-Athènes Site web : www.dpa.gr	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Hungary</i>	STCE 108 (1/2/1998) Directive 95(46) (requirements already met)	Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest	2. 'special data' shall mean any personal data relating to a) racial, or national or ethnic minority origin, political opinion or party affiliation, religious or ideological belief, or membership in any interest representing organisation; b) state of health, pathological addictions, sexual life or criminal personal data.		Data Protection Commissioner of Hungary Site web : www.obh.hu/ Parliamentary Commissioner for the National and Ethnic Minorities Rights Site Web : www.obh.hu/nekh/en/index.htm	
<i>Iceland</i>	STCE 108 (1/7/1991)	- Statistics Iceland - Rules of Procedure for Treating Confidential Data, 2004 - Act on the Protection of Privacy as regards the Processing of Personal Data, No. 77/2000	8. Sensitive data: a. Data on origin, skin colour, race, political opinions, religious beliefs and other life philosophies. b. Data on whether a man has been suspected of, indicted for, prosecuted for or convicted of a punishable offence. c. Health data, including genetic data and data on use of alcohol, medical drugs and narcotics. d. Data concerning sex life (and sexual behaviour). e. Data on trade-union membership.	Similar or close to the list in Directive 95	Persónuvernd (The Data Processing Authority) Rauðarárstíg 10 IS-105, Reykjavík Tel: 354 510 96 00 Fax: 354 510 9606 E-mail: postur@personuvernd.is Internet: www.personuvernd.is	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Ireland</i>	STCE 108 (1/8/1990) Directive 95(46) (not notified)	- Number 25 of 1988 - Data Protection Act, 1988 , amendment 10/4/2003	'sensitive personal data' means personal data as to— (a) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject, (b) whether the data subject is a member of a trade union, (c) the physical or mental health or condition or sexual life of the data subject, (d) the commission or alleged commission of any offence by the data subject, or (e) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings”	Similar or close to the list in Directive 95	Office of the Data Protection Commissioner 3rd Floor, Block 6 Irish Life Centre Lower Abbey Street EIR-Dublin 1	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Italy</i>	STCE 108 (1/7/1997) Directive 95(46) (08/05/1997)	Loi n° 675 sur la protection des données personnelles – 1996 (modifiée par plusieurs décrets législatifs de 1997, 1998 et 1999) (Legge n. 675 del 31 dicembre 1996 - Tutela delle persone e di altri soggetti rispetto al trattamento dei dati personali) Data-Protection-Code-2003	d) 'sensitive data' shall mean personal data allowing the disclosure of racial or ethnic origin, religious, philosophical or other beliefs, political opinions, membership of parties, trade unions, associations or organizations of a religious, philosophical, political or trade-unionist character, as well as personal data disclosing health and sex life;	Section 20 (Principles Applying to the Processing of Sensitive Data) 1. Processing of sensitive data by public bodies shall only be allowed where it is expressly authorised by a law specifying the categories of data that may be processed and the categories of operation that may be performed as well as the substantial public interest pursued. 2. Whenever the substantial public interest is specified by a law in which no reference is made to the categories of sensitive data and the operations that may be carried out, processing shall only be allowed with regard to the categories of data and operation that have been specified and made public by the entities processing such data, having regard to the specific purposes sought in the individual cases and in compliance with the principles referred to in Section 22, via regulations or regulations-like instruments that shall be adopted pursuant to the opinion rendered by the Garante under Section 154(1), letter g), also on the basis of draft models. 3. If the processing is not provided for expressly by a law, public bodies may request the Garante to determine the activities that pursue a substantial public interest among those they are required to discharge under the law. Processing of sensitive data shall be authorised in pursuance of Section 26(2) with regard to said activities, however it shall only be allowed if the public bodies also specify and make public the categories of data and operation in the manner described in paragraph 2.	Garante per la protezione dei dati personali Piazza Monte Citorio, n. 121 I - 00186 Roma Tel: 39 06 69 67 71 Fax: 39 06 69 67 77 15 E-mail: garante@garanteprivacy.it Internet: www.garanteprivacy.it/garante/navig/jsp/index.jsp	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Latvia</i>	STCE 108 (1/9/2001) Directive 95(46) (24/10/2002)	Personal Data Protection Law, 2002	8) sensitive personal data - personal data which indicate the race, ethnic origin, religious, philosophical or political convictions, or trade union membership of a person, or provide information as to the health or sexual life of a person.	Section 11. The processing of sensitive personal data is prohibited, except in cases where: 1) the data subject has given his or her written consent for the processing of his or her sensitive personal data; 2) special processing of personal data, without requesting the consent of the data subject, is provided for by regulatory enactments which regulate legal relations regarding employment, and such regulatory enactments guarantee the protection of personal data; 3) personal data processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express their consent; 4) personal data processing is necessary to achieve the lawful, non-commercial objectives of public organisations and their associations, if such data processing is only related to the members of these organisations or their associations and the personal data are not transferred to third parties; 5) personal data processing is necessary for the purposes of medical treatment, rendering health care services or administration thereof and distribution of medical remedies; [24.10.2002] 6) the processing concerns such personal data as necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings. 7) processing of personal data is necessary for rendering social aid and is performed by a provider of social aid services; [24.10.2002] 8) processing of personal data is necessary for establishment of the Latvia State Archives Fund is performed by state archives and institutions having the right of a state depository approved by the Director General of the State Archives; [24.10.2002] 9) processing of personal data is necessary for statistical research carried out by the Central Statistics Board; [24.10.2002] 10) processing relates to personal data published by the data subject him/herself. [24.10.2002]	Data State Inspection Kr. Barona Street 5/4 LV-1050 Riga Tel: +371 7223131 Fax: +371 7223556 E-mail: info@dvi.gov.lv Internet: www.dvi.gov.lv	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Liechtenstein</i>	STCE 108 (1/9/2004)	Data Protection Act of 14 March 2002	e) "sensitive data": data relating to: aa) religious, philosophical, or political opinions or activities, bb) health, sexuality, or racial origin, cc) social security files, dd) criminal or administrative proceedings and penalties.	Article 18 b) Sensitive data and personal profiles An infringement of privacy in the processing of sensitive data and personal profiles shall not be unlawful when: a) a law expressly provides therefore; b) such processing is indispensable for the fulfilment of a task clearly de-fined in a law; c) the person affected in the specific case has authorised such processing or has personally made the data accessible to the public; d) the processing of the data is necessary to protect interests essential to the life of the affected person or a third party, provided the person is incapable of granting consent for physical or legal reasons; e) the processing of the data is conducted by non-profit organisations, under the condition that the processing only relates to members of such organisations or persons who maintain regular contact with such organisations in connection with their functions, provided the data is not passed on to third parties without the consent of the affected person; f) the processing of the data is necessary for the assertion, exercise, or de-fence of legal claims before a court; or g) the processing of the data is necessary for the purpose of health care, medical diagnosis, medical care or treatment, or the administration of health services, and is conducted by persons subject to professional secrecy obligations.	Liechtensteinische Landesverwaltung Stabstelle für Datenschutz Aeulestrasse 51 Postfach 684 FL-9490 Vaduz Tel : + 42 32 36 60 90 Fax: + 42 32 36 60 99 E-mail : info@sds.llv.li Internet : www.sds.llv.li	
<i>Lithuania</i>	STCE 108 (1/10/2001) Directive 95(46) (21/3/2003)	Law on Legal Protection of Personal Data 21 January 2003, No. IX-1296 amendments of 13 April 2004	9. Special categories of personal data - the data as to the racial or ethnic origin of a natural person, his political opinions, religious, philosophical or other beliefs, membership in a trade union, and data concerning his health, sex life and criminal convictions.	Similar or close to the list in Directive 95	State Data Protection Inspectorate Gedimino Ave. 27/2 LT-2600 Vilnius Tél: + 370 5 279 14 45 Fax: +370 5 261 94 94 E-mail: ada@ada.lt Internet: www.ada.lt/en/	Republic of Lithuania Law on the Population and Housing Census 2001 June 10, 1999. No VIII - 1222 Vilnius
<i>Luxembourg</i>	STCE 108 (1/10/2001) Directive 95(46) (21/3/2003)	Protection des personnes à l'égard du traitement des données à caractère personnel Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel.	Art. 6. Traitement de catégories particulières de données (1) Les traitements qui révèlent l'origine raciale ou ethnique, les opinions politiques, les convictions religieuses ou philosophiques, l'appartenance syndicale, ainsi que les traitements de données relatives à la santé et à la vie sexuelle, y compris le traitement des données génétiques sont interdits.	Similar or close to the list in Directive 95	Commission nationale de la protection des données 68, rue de Luxembourg L-4221 Esch-sur-Alzette Tél. (+352) 26 10 60-1 Fax : (+352) 26 10 60-29 E-mail : info@cnpd.lu www.cnpd.lu/	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Malta</i>	STCE 108 (1/6/2003) Directive 95(46) (15/7/2003)	Data Protection Act of December 14 2001 (Act XXVI of 2001), as amended by Act XXXI of 2002	"sensitive personal data" means personal data that reveals race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health, or sex life;		Office of the Data Protection Commissioner 2, Airways House High Street MT-Sliema SLM 16 Tel: (+356) 2328 7100	
<i>Moldova</i>	STCE 108 (signed 4/5/1998)					
<i>Netherlands</i>	STCE 108 (1/12/1993) Directive 95(46) (6/7/2000)	Personal Data Protection Act (Wet bescherming persoonsgegevens), Act of 6 July 2000	Section 2. Processing of special personal data Article 16 It is prohibited to process personal data concerning a person's religion or philosophy of life, race, political persuasion, health and sexual life, or personal data concerning trade union membership, except as otherwise provided in this Section. This prohibition also applies to personal data concerning a person's criminal behaviour, or unlawful or objectionable conduct connected with a ban imposed with regard to such conduct.	Article 18 1. The prohibition on processing personal data concerning a person's race, as referred to in Article 16, does not apply where the processing is carried out: a. with a view to identifying data subjects and only where this is essential for that purpose; b. for the purpose of assigning a preferential status to persons from a particular ethnic or cultural minority group with a view to eradicating or reducing actual inequalities, provided that: 1°. this is necessary for that purpose; 2°. the data only relate to the country of birth of the data subjects, their parents or grandparents, or to other criteria laid down by law, allowing an objective determination whether a person belongs to a minority group as referred to under (b), and 3°. the data subjects have not indicated any objection thereto in writing.	Dutch DPA P.O. Box 93374 NL-2509 AJ The Hague Visiting address (only by appointment) Prins Clauslaan 20 NL-2595 AJ The Hague Telephone: +31 (0)70 381 1300 Fax: +31 (0)70 381 1301	
<i>Norway</i>	STCE 108 (1/10/1985)	Act of 14 April 2000 No. 31 relating to the processing of personal data (Personal Data Act)	8) sensitive personal data: information relating to a) racial or ethnic origin, or political opinions, philosophical or religious beliefs, b) the fact that a person has been suspected of, charged with, indicted for or convicted of a criminal act, c) health, d) sex life, e) trade-union membership.	Similar or close to the list in Directive 95	The Data Inspectorate Mail address: P.O. Box 8177 Dep, N-0034 Oslo Telephone: +47 22 39 69 00 - Telefax: +47 22 42 23 50 E-mail: postkasse@datatil-synet.no Comments on this site: webmaster@datatil-synet.no	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Poland</i>	STCE 108 (1/9/2002) Directive 95(46) (1/1/2004)	Loi du 29 août 1997 sur la protection des données personnelles (texte intégral J.O. No 101, p. 926 avec mod.) Amendée au 1/1/2004, 1/5/2004	Article 27(1) Le traitement des données qui peuvent révéler l'origine raciale ou ethnique, les opinions politiques, les convictions religieuses ou philosophiques, l'affiliation religieuse, politique ou syndicale et des données relatives à l'état de santé, code génétique, les addictions ou la vie sexuelle et des données sur les condamnations et des punitions et d'autres décisions prononcées dans des instructions judiciaires ou administratives.	Similar or close to the list in Directive 95	The Office of the General Inspector of Data Protection ul. Stawki 2 PL-00 193 Warsaw Tel : 48 22 860-70-81 Fax : 48 22 860-70-90 E-mail : sekretariat@giodo.gov.pl Internet: www.giodo.gov.pl	National Act on national and ethnic minorities and regional languages, January 6 2005

Countries	International conventions on data protection	Data Protection	Sensitive data	Exceptions from restrictions	Data Protection Office	Other relevant provisions
Portugal	STCE 108 (1/1/1994) Directive 95 (27/10/1998)	Assemblée de la République Loi n° 67/98 du 26 octobre 1998 Loi relative à la protection des données à caractère personnel (transpose dans l'ordre juridique portugais la directive 95/46/CE du Parlement européen et du Conseil, du 24 octobre 1995, relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données)	Article 7 Traitement de données sensibles 1. Le traitement de données à caractère personnel qui révèlent l'origine raciale ou ethnique, les opinions politiques, les convictions religieuses ou philosophiques, l'appartenance syndicale, ainsi que le traitement de données relatives à la santé et à la vie sexuelle, y compris les données génétiques, sont interdits. 2. Par disposition légale ou autorisation de la CNPD, le traitement des données visées au paragraphe précédent peut être autorisé lorsque, pour des motifs d'intérêt public important, il est indispensable à l'exercice des fonctions légales ou statutaires de son responsable ou lorsque la personne concernée a donné son consentement exprès au traitement, dans les deux cas avec des garanties de non-discrimination et moyennant les mesures de sécurité prévues à l'article 15.	3. Le traitement des données visées au paragraphe 1 est autorisé aussi dans les cas où : a. le traitement est nécessaire à la défense d'intérêts vitaux de la personne concernée ou d'une autre personne et si la personne concernée se trouve dans l'incapacité physique ou juridique de donner son consentement; b. le traitement est effectué, avec le consentement de la personne concernée, par une fondation, une association ou un organisme sans but lucratif de caractère politique, philosophique, religieux ou syndical, dans le cadre de ses activités légitimes, à condition que le traitement concerne les seuls membres de cet organisme ou les personnes qui entretiennent avec lui des contacts réguliers liés à sa finalité et que les données ne soient pas communiquées à des tiers sans le consentement des personnes concernées; c. le traitement porte sur des données manifestement rendues publiques par la personne concernée, dès lors que son consentement au traitement des données peut légitimement être déduit de ses déclarations; d. le traitement est nécessaire à la reconnaissance, l'exercice ou la défense d'un droit en justice et est effectué exclusivement à cette fin. 4. Le traitement de données relatives à la santé et à la vie sexuelle, y compris les données génétiques, est permis lorsqu'il est nécessaire aux fins de la médecine préventive, des diagnostics médicaux, de l'administration de soins ou de traitements ou de la gestion des services de santé et que le traitement de ces données est effectué par un praticien de la santé soumis au secret professionnel ou par une autre personne également soumise à une obligation de secret et qu'il est notifié à la CNPD, conformément aux dispositions de l'article 27, et à condition aussi que des mesures adéquates de protection de l'information soient garanties.	Comissão Nacional de Protecção de Dados (CNPd) Rua de São Bento 148, 3º P-1200-821 Lisboa Tel: 351 1 392 84 00 Fax: 351 1 397 68 32 E-mail: geral@cnpd.pt Internet: www.cnpd.pt	
Romania	STCE 108 (1/6/2002)	Law no. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and Free Circulation of Such Data	Article 7(1) The processing of personal data linked to ethnic or racial origin, to political, religious or philosophic opinions or of another, similar nature, to trade-union adhesion, and also of personal data referring to state of health or sexual life, is prohibited.	Similar or close to the list in Directive 95	People's Advocate B-dul Iancu de Hunedoara, nr 3-5 Sector 1 RO-71204 Bucharest Tel: 40 1 231 5001 Fax: 40 1 231 50 00 E-mail: avp@avp.ro Internet: www.avp.ro	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Russian Federation</i>	STCE 108 (signed 7/11/2001)	Russian federal law on Information, Informatisation and information protection, January 25 1995	Article 11 (2) : Personal data may not be used to inflict economic or moral damage on citizens, or to impede the exercise of the rights and freedoms of the citizens of the Russian Federation. Restriction of the citizens' rights on the basis of information on social origin, race, nationality, language, religion or party membership is forbidden and is punished according to the law			
<i>Serbia and Montenegro</i>	STCE 108 (1/1/2006)	Decree on Enactment of Law on Protection of Personal Data - 1998				

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
Slovakia	STCE 108 (1/1/2001) Directive 95(46) (1/5/2004)	Act n 428/2002 on Protection of Personal Data	<p>§ 8 Special Categories of Personal Data</p> <p>(1) The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in political parties or movements, trade-union membership, and the processing of data concerning health or sex life shall be prohibited.</p> <p>(2) In the processing of personal data, an identifier of general application stipulated by a special Act¹¹⁾ may be used for the purposes of identification of a natural person only provided that its use is necessary for achieving the given purpose of the processing. Processing of a different identifier revealing characteristics of the data subject, or releasing of an identifier of general application shall be prohibited.</p> <p>(3) Processing of personal data relating to a breach of provisions of the criminal law, misdemeanours act or civil law, or relating to execution of final judgements or decisions, may only be performed by a person entitled to it by a special Act.¹²⁾</p> <p>(4) Biometrical data may only be processed under conditions stipulated by a special Act, provided that</p> <p>a) it expressly results for the controller from the Act; or</p> <p>b) the data subject gave a written consent to the processing.</p> <p>(5) Personal data relating to mental identity of a natural person or his mental capacity to work may only be processed by a psychologist or by a person entitled to it by a special Act.¹³⁾</p>	Liste d'exemption proche de Directive 95 + ce motif formulé spécialement : section 9 (1) a) the processing is required by a special Act stipulating a list of personal data, the purpose of their processing and the group of data subjects; the processed personal data of the data subject may be provided, made available or made public from the filing system only if the special Act stipulates the purpose of provision, making available or public, a list of personal data that can be provided, made available or public, as well as the third parties to which personal data are provided or a group of recipients to which personal data are made available, unless otherwise stipulated by this Act;	Commissioner For Personal Data Protection Úrad vlády Slovenskej republiky Námestie slobody 1 SK-813 70 Bratislava Tel: +421 7 59379 378 fax: +421 7 59379 266 e-mail: statny.dozor@pdb.gov.sk Internet : www.dataprotection.gov.sk	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Slovenia</i>	STCE 108 (1/9/1994) Directive 95(46) (6/7/2000)	Personal Data Protection Act (Published in Official Gazette of the Republic of Slovenia No. 59/1999; Entry into force: 07.08.1999) Amended in 07/2001 (No. 57/2001) and replaced by a new Personal Data Protection Act in 01/2005	Article 6 (19) Sensitive personal data - are data on racial, national or ethnic origin, political, religious or philosophical beliefs, trade-union membership, health status, sexual life, the entry in or removal from criminal record or records of minor offences that are kept on the basis of a statute that regulates minor offences (hereinafter: minor offence records); biometric characteristics are also sensitive personal data if their use makes it possible to identify an individual in connection with any of the aforementioned circumstances.	Exemptions close to the EU Directive 95, with a different wording (Article 13: "Sensitive personal data may only be processed in the following cases: (...)")	Ministry of Justice Zupanciceva 3 SI-1000 Ljubana Tel : 386 61 17 85 549 Fax : 386 61 12 61 050 E-mail : Joze.Santavec@gov.si	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
Spain	STCE 108 (1/10/1985) Directive 95(46) (14/1/2000)	Ley Orgánica 15/1999, de 13 de diciembre de Protección de Datos de Carácter Personal.	Art. 7 organic law 15/1999 Data with special protection 1. In accordance with the provisions of Article 16(2) of the Constitution, nobody may be obliged to state his ideology, religion or beliefs. (...) 2. Personal data which reveal the ideology, trade union membership, religion and beliefs may be processed only with the explicit and written consent of the data subject. Exceptions shall be files maintained by political parties, trade unions, churches, religious confessions or communities, and associations, foundations and other non-profit-seeking bodies with a political, philosophical, religious or trade-union aim, as regards the data relating to their associates or members, without prejudice to the fact that assignment of such data shall always require the prior consent of the data subject. 3. Personal data which refer to racial origin, health or sex life may be collected, processed and assigned only when, for reasons of general interest, this is so provided for by law or the data subject has given his explicit consent. 4. Files created for the sole purpose of storing personal data which reveal the ideology, trade union membership, religion, beliefs, racial or ethnic origin or sex life remain prohibited.	Similar or close to the list in Directive 95		Law 4/1996 of 10 January, by which Law 7/1985 of 2 April, Regulator of the Local Regimen Bases and Regulation of Population and Territorial Demarcation relative to the municipal register is modified approved by Royal Decree 2612/1996 of 20 December by which the Regulation of Population and Territorial Demarcation of Local Entities is modified, approved by Royal Decree 1690/1986 of 11 July, establishes the regulations for the formation of the municipal register and the obtaining of population figures coming from the revision of the same to 1 January of each year.

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
Sweden	STCE 108 (1/10/1985) Directive 95(46) (3/9/1998)	Personnal data act (SFS 1998:204) of 29.4.98 and regulation SFS 1998:1191 of 03.09.98	Section 13 It is prohibited to process personal data that reveals a) race or ethnic origin, b) political opinions, c) religious or philosophical beliefs, or d) membership of a trade union. It is also prohibited to process such personal data as concerns health or sex life. Information of the kind referred to in the first and second paragraphs is designated as sensitive personal data in this Act.	Exemptions from the prohibition of processing sensitive personal data Section 14 Despite the prohibition of Section 13 it is permitted to process sensitive personal data in those cases stated in Sections 15–19. In Section 10 there are provisions concerning the cases in which processing of personal data is not permitted in any case whatsoever. Consent or publicising Section 15 Sensitive personal data may be processed if the registered person has given his/her explicit consent to processing or in a clear manner publicised the information.	Datainspektionen Box 8114 S-104 20 Stockholm Internet: www.datainspektionen.se	
Switzerland	STCE 108 (1/2/1998)	Loi fédérale sur la protection des données (LPD) du 19 juin 1992 Ordonnance relative à la loi fédérale sur la protection des données (OLPD) du 14 juin 1993	Article 3 (c) données sensibles, les données personnelles sur: 1. les opinions ou activités religieuses, philosophiques, politiques syndicales, 2. la santé, la sphère intime ou l'appartenance à une race, 3. des mesures d'aide sociale, 4. des poursuites ou sanctions pénales et administratives;	Pas d'interdiction de principe de collecte des données sensibles, mais un régime d'exigences plus élevées (conformément à l'article 6 de la STE 108)	Eidgenössischer Datenschutz-beauftragter /Swiss Federal Data Protection Commissioner Feldeggweg 1 CH-3003 Berne Tel: 41 31 322 43 95 Fax: 41 31 325 99 96 E-mail: jean-philippe.walter@bk.admin.ch/ info@edsb.ch Internet: www.edsb.ch	
"The former Yugoslav Republic of Macedonia"	STCE 108 (1/7/2006)	Law on personal data protection, No. 07-378/1 January 25, 2005 Skopje "Official Gazette of RM" No. 12/94	Article 2(10) "Special categories of personal data" are personal data revealing the racial or ethnic origin, the political views, religious or other beliefs, membership in a trade union and data relating to the health condition or the sexual life.	Similar or close to the list in Directive 95		Law on Census of Population, Households and Dwellings in the Republic of Macedonia, 2001 ("Official Gazette of the Republic of Macedonia" No 16/2001 and changes and supplements to this Law published in the "Official Gazette of the Republic of Macedonia" No 37/2001, 70/2001 and 43/2002).

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>Turquie</i>	Pas de ratification de la convention STE 108	Draft law			Penal Code (article 135, §2) states that recording information regarding "racial origin" (irskal köken) or "religious beliefs" (dini görus) is forbidden	
<i>Ukraine</i>	Pas de ratification de la convention STE 108		Extrait de "Human rights and privacy" http://www.privacy-international.org/survey/phr2003/countries/ukraine.htm : In June 2001, Mr. Zadorozhnyi (then Chief of the Parliament Committee on Legal Policy, currently the Representative of the President in the Parliament) introduced an alternative draft bill on Personal Information to the Parliament. The bill was prepared with the assistance of Mr. A. Pazyuk, Director of Privacy Ukraine. The draft covers public and private sectors, provides natural persons with the right to informational self-determination. It includes special provisions concerning sensitive data (racial origin, nationality, trade union membership, political, philosophical and religious beliefs, medical and health data, and data on criminal offenses) and imposes limitation of data transfer to third countries with inadequate level of data protection. The draft proposes the establishment of independent authority for supervision.		Privacy Ukraine President Box 118 UA-Kyiv 54 01054 Tel/Fax : +38 044 2162307 E-mail: privacy@ukrnet.net	

<i>Countries</i>	<i>International conventions on data protection</i>	<i>Data Protection</i>	<i>Sensitive data</i>	<i>Exceptions from restrictions</i>	<i>Data Protection Office</i>	<i>Other relevant provisions</i>
<i>United Kingdom</i>	STCE 108 (1/12/1987) Directive 95(46) (1/3/2000)	Data Protection Act 1998	2. In this Act "sensitive personal data" means personal data consisting of information as to: (a) the racial or ethnic origin of the data subject, (b) his political opinions, (c) his religious beliefs or other beliefs of a similar nature, (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992), (e) his physical or mental health or condition, (f) his sexual life, (g) the commission or alleged commission by him of any offence, or (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.	Chap 29, schedule 3 9. - (1) The processing- (a) is of sensitive personal data consisting of information as to racial or ethnic origin, (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and (c) is carried out with appropriate safeguards for the rights and freedoms of data subjects. (2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.	Information Commissioner Wycliffe House, Water Lane , Wycliffe House GB-Wilmslow - Cheshire SK9 5AF Tel: 44 (0) 1625 545 745 Fax: 44 (0) 1625 524 510 E-mail: data@dataprotection.gov.uk Internet: www.dataprotection.gov.uk	

Appendix IV –Table detailing data collection

Country	Censuses			Population registers
	Year of census	Variables collected	Comments	
Albania	2001	Country of birth	No data gathered on nationality, ethnic group, religion or language, despite recognition of minorities	
Armenia	2001	Country of birth Nationality Ethnic group Language (mother tongue and spoken)		
Austria	2001	Nationality Religion Language	Co-presence of long-standing minorities ("Völksguppen") and emergence of "new" migration-related minorities	New system linking administrative files and population registers: data on language and religion are forwarded in special surveys
Azerbaijan	1999	Ethnic group Nationality Country of birth Language (mother tongue)		
Belgium	2001	Little information in the census, which is linked with the population registers. Questions on language are considered sensitive in view of its position in the political organisation of the country. In addition, the information gathered varies according to the community concerned: in the Flemish-speaking part of the country "ethnic" data is collected, but not in the Walloon part.		Country of birth Nationality
Bosnia and Herzegovina	1991		Ethnic group, language and religion are highly sensitive: "no mutual consent in BiH"	
Bulgaria	2001	Nationality Country of birth Ethnic group Religion Language (mother tongue)	Questions on ethnic group, religion and mother tongue are optional and answers are to be provided by ticking a box in a given list of response options	Minorities are primarily Turks (9.5%) and Roma/Gypsies (4.7%); but these figures are considered to be very much underestimated
Croatia	2001	Nationality Country of birth Ethnic group Religion Language (mother tongue)	Questions on ethnic group, religion and mother tongue are optional and asked as open questions	
Cyprus	2001	Country of birth Country of birth (parents) Nationality "Ethno-religious" group Religion Language	The concept of "ethno-religious" groups comes from the Communities defined in the Constitution (Article 2(1) and 2(2)) based on a mixture of origin, language, religion and culture (Greek and Turkish Cypriots, Armenians, Maronites, Latins)	
Czech Republic	2001	Nationality Country of birth Ethnic group Religion (affiliation and beliefs) Language (mother tongue)	Questions on nationality, ethnic group and religion are asked as open questions	

Country	Censuses			Population registers
	Year of census	Variables collected	Comments	
Denmark	No census, but a system of records interconnected with the population register		In education, survey of languages spoken by children at home and division into categories	Nationality, country of birth, immigrants, descendants of immigrants (country of birth of parents)
Estonia	2000	Nationality Country of birth (individual and parents) Ethnic group Religion Language (mother tongue) language spoken	Questions on religion and language spoken are optional, but not the other questions	
Finland	No longer any census but a sophisticated system of administrative files interconnected with the population register			Nationality, country of birth, language and religion (religious affiliation)
France	1999 and continually since 2004	Nationality + previous nationality Country of birth	Data on language and country of birth of parents collected in a survey linked to the census	
Georgia	2002	Country of birth Ethnic group Nationality Religion Language (mother tongue + languages known)	Answers on ethnic group and religion are to be provided by ticking a box in a given list of response options – no “other” box; data on language collected only in relation to ethnic group	
Germany	No longer any census. Data collected via population register and microdata		There is a special file for foreigners. The Microcensus includes a question on country of birth of parents, but the population registers, covering the whole of the country, do not contain this information	Country of birth (individual and parents) Nationality Religion (affiliation)
Greece	2001	Nationality Country of birth	Clear distinction between nationality and country of birth because of the “return migration” of “ethnic Greeks”. Information on religion removed from municipal population registers following an opinion issued by the Data Protection Authority (31/10/2001)	
Hungary	2001	Nationality Country of birth Ethnic group Religion Language (mother tongue, language spoken)	Questions on ethnic group, religion and language are optional, with explicit mention of this on the questionnaire. A question on cultural affinities and shared values supplements the question on ethnic group.	
Iceland	No census, but a system of records interconnected with the population register			Nationality Country of birth Religion (affiliation to a church) Language
Ireland	2006	Nationality Country of birth Ethnic group Religion Language	The question on ethnic group was first asked in 2006 (it was not asked in 2002). The names are similar to those used in the United Kingdom, without the “mixed” categories. There is a separate category for Irish Travellers	

Country	Censuses			Population registers
	Year of census	Variables collected	Comments	
Italy	2001	Nationality + previous nationality Country of birth		
Latvia	2000	Nationality Ethnic group Language (mother tongue + linguistic skills)	The minorities question is a sensitive issue in Latvia where the Latvians (ethnic definition) represent only 57.7% of the population and the Russian minority 29.6%. The Russian-speaking population accounts for 37.5%	
Liechtenstein	No census			Nationality Language Religion
Lithuania	2001	Nationality Country of birth Ethnic group Religion (affiliation) Language (mother tongue and languages known)	Questions on ethnic group, religion and language are answered by ticking a box in a given list of response options, although there is an "other" box. Optional questions according to the Protection Authority, but there are no instructions to this effect on the questionnaire	
Luxembourg	2001	Nationality Country of birth		
Malta	2005	Nationality Country of birth Language (spoken + skills)		
Moldova	2004	Nationality Ethnic group Religion Language (mother tongue + languages known)	Questions on ethnic group, religion and language are open questions	
Netherlands	No census, but a system of records interconnected with the population register		On the basis of the dual recording of the individual's and parents' country of birth, construction of the "ethnic minority" category, and "allochtoon" (anyone, one or both of whose parents was not born in the Netherlands) Religion inferred from country of birth	Nationality Country of birth (individual + parents)
Norway	No census, but a system of records interconnected with the population register			Nationality Country of birth (individual + parents)
Poland	2002	Country of birth Nationality Ethnic group Language (spoken)		
Portugal	2001	Nationality Country of birth Religion	Question on religion is optional	
Romania	2002	Nationality Country of birth Ethnic group Religion Language (mother tongue)	Questions on ethnic group, religion and language are answered by ticking a box in a given list of response options, although there is an "other" box	

Country	Censuses			Population registers
	Year of census	Variables collected	Comments	
Russian Federation	2002	Nationality Country of birth Ethnic group Language (mother tongue + mastery of Russian)	Optional census pursuant to Article 26(1) of the 1993 constitution which states that a declaration of national identity is a matter of personal choice. Major debate concerning questions on national identity prior to 2002 census	
Serbia and Montenegro	2002	Country of birth Ethnic affiliation Religion Language (mother tongue)	Questions on ethnic affiliation and religion are optional (indicated on the questionnaire with a reference to Article 45 of the constitution). Answers are open, with no list	
Slovakia	2001	Country of birth Nationality Ethnic group Religion Language (mother tongue)	Regulation on the content of the census agreed in reference to the policy for minorities	
Slovenia	2002	Country of birth Ethnic group Religion Language (mother tongue and language spoken)	Questions on ethnic group and religion are optional. There is a pre-coded box for those not wishing to answer (reference to the Census Act)	
Spain	2001		Information collected in common between the population register and the census	Country of birth Nationality Language (Basque Country)
Sweden	No census (since 1990), but a system of records interconnected with the population register			Country of birth Nationality
Switzerland	2000	Country of birth Nationality Religion (affiliation) Language (best known and mostly used)	For 2010, the census will undoubtedly be linked to the population registers and administrative files	
“the former Yugoslav Republic of Macedonia”	2002	Nationality Country of birth Ethnic affiliation Religion (affiliation) Language (mother tongue)	Questions on ethnic affiliation and religion are optional (Article 11 of the Census Act, clearly indicated on the questionnaire)	
Turkey	2000	Nationality Country of birth	Data on religion is collected in the family registers (<i>Aile Kütüğü</i>), but apparently is not made further available. The question of ethnic origin and national minorities is a sensitive issue in Turkey	Religion
Ukraine	2001	Country of birth Nationality Ethnic origin Language (mother tongue and other language spoken well)		

Country	Censuses			Population registers
	Year of census	Variables collected	Comments	
United Kingdom	2001	Country of birth Ethnic group Religion Language (mother tongue)	Questions on ethnic group and religion are answered by ticking a box in a given list of response options. The question on religion was introduced for the first time in 2001 and is optional.	Many administrative and company files include a question on ethnic group

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